



WORKING TO MAKE A DIFFERENCE

Policy and Research Division

Mailing Address

PO Box 5350 Stn Terminal  
Vancouver BC V6B 5L5

Location

6951 Westminster Highway  
Richmond BC

Telephone 604 276-5160  
Fax 604 279-7599

October 2007

Update 2007 – 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 2007 – 5.

These amendments include:

- #7.10, *Coverage for Volunteer Firefighters*
- #13.40, *Infectious Agent or Disease Exposures*
- #26.04, *Recognition by Order Dealing with a Specific Case*
- #32.50, *“Date of Injury” for Occupational Disease*
- #48.41, *When Does an Overpayment of Compensation Occur?*
- #71.40, *Adjustments*
- #74.21, *Duration of Treatment*
- #79.00, *Clothing Allowances*
- #96.20, *Board Officers*
- #96.30, *Board Officers in Disability Awards*

A summary of the amendments **effective October 1, 2007** 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 WorkSafeBC Customer Service at the following:

Local phone: 604-232-9704  
Toll-free phone: 1-866-319-9704

Local fax: 604-232-9703  
Toll-free fax: 1-888-232-9714

Roberta Ellis  
Vice President  
Policy and Research Division  
Attachments

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

### **SUMMARY OF AMENDMENTS – Update 2007 – 6**

Table of Contents	Pages i to viii, xvii to xx and xxiii to xxiv	Consequential amendments
Chapter 2	Pages 3 to 7	Amend policy item #7.10
Chapter 3	Pages 7 to 73	New policy item #13.40
Chapter 4	Pages 5 to 10 Pages 65 to 72	Policy item #26.04 Delete policy item #32.60 and amend policy item #32.50
Chapter 7	Pages 7 to 10	Amend policy item #48.41
Chapter 9	Pages 39 to 40	Amend policy item #71.40
Chapter 10	Page 5 to 49	Amend policy item #74.21 and policy item #79.00
Chapter 12	Pages 21 to 26	Amend policy item #96.20 and policy item #96.30

# TABLE OF CONTENTS

## CHAPTER 1 – SCOPE OF VOLUME II OF THIS *MANUAL*

#1.00	INTRODUCTION	1-1
#1.01	Legislative Amendments	1-1
#1.02	Scope of Volume I and Volume II of this <i>Manual</i>	1-2
#1.03	Scope of Volumes I and II in Relation to Benefits for Injured Workers	1-3
#1.10	The Persons Covered by the <i>Act</i>	1-5
#1.20	The Conditions under which Compensation is Payable	1-5
#1.30	The Type and Amount of Compensation	1-6
#1.40	Charging of Claims Costs	1-6
#2.00	WORKERS' COMPENSATION BOARD	1-6
#2.10	Jurisdiction over Claims Adjudication	1-6
#2.20	Application of the <i>Act</i> and Policies	1-7
NOTES		1-9

## CHAPTER 2 – WORKERS AND EMPLOYERS COVERED BY THE *ACT*

#3.00	INTRODUCTION	2-1
#4.00	EXEMPTIONS AND EXCLUSIONS FROM COVERAGE	2-1
#5.00	COVERAGE OF WORKERS	2-1
#6.00	DEFINITIONS OF "WORKER" AND "EMPLOYER"	2-2
#6.10	Nature of Employment Relationship	2-2
#6.20	Voluntary and Other Workers Who Receive No Pay	2-3
#7.00	SPECIFIC INCLUSIONS IN DEFINITION OF WORKER	2-3
#7.10	Coverage for Volunteer Firefighters	2-3
#8.00	ADMISSION OF WORKERS, EMPLOYERS, AND INDEPENDENT OPERATORS	2-6
#8.10	Federal Government Employees	2-6

## CHAPTER 3 – COMPENSATION FOR PERSONAL INJURY

#12.00	INTRODUCTION	3-1
#13.00	PERSONAL INJURY	3-1

#13.10	Distinction Between an Injury and Disease	3-1
#13.12	Disablement from Vibrations	3-3
#13.20	Psychological Impairment	3-3
#13.30	Mental Stress	3-3
#13.40	Infectious Agent or Disease Exposures	3-7
#14.00	ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT	3-9
#14.10	Presumption	3-10
#14.20	Occurrence or Non-Occurrence of a Specific Incident	3-11
#15.00	NATURAL CAUSES	3-12
#15.10	Worker Has Pre-existing Deteriorating Condition	3-12
#15.15	Firefighters and Heart Injury	3-13
#15.20	Injuries Following Motions at Work	3-15
#15.30	Recurring Temporary Disabilities	3-17
#15.40	Ganglia	3-18
#15.50	Herniae	3-18
#15.51	Prior Compensable and Non Compensable Herniae	3-19
#15.60	Shoulder Dislocations	3-20
#16.00	UNAUTHORIZED ACTIVITIES	3-20
#16.10	Intoxication or Other Substance Impairment	3-21
#16.20	Horseplay	3-22
#16.30	Assaults	3-23
#16.40	Injury While Doing Another Persons Job	3-23
#16.50	Emergency Actions	3-24
#16.60	Serious and Wilful Misconduct	3-25
#17.00	HAZARDS ARISING FROM NATURE	3-26
#17.10	Insect Bites	3-26
#17.20	Plant Stings	3-27
#17.30	Frostbite, Sunburn and Heat Exhaustion	3-27
#17A.10	Commencement of Employment Relationship	3-27
#17A.20	Termination of Employment Relationship	3-28
#18.00	TRAVELLING TO AND FROM WORK	3-28

	#18.01	Entry to Employers Premises	3-28
#18.10		Road Leading to Employers Premises	3-29
	#18.11	Captive Road Doctrine	3-29
	#18.12	Special Hazards of Access Route	3-31
#18.20		Provision of Transportation by Employer	3-32
	#18.21	Provision of Vehicle by Employer	3-32
	#18.22	Payment of Travel Time and/or Expenses by Employer	3-33
#18.30		Journey to Work Also Has Employment Purpose	3-34
	#18.31	Worker On Call	3-34
	#18.32	Irregular Starting Points	3-35
	#18.33	Deviations From Route	3-36
#18.40		Travelling Employees	3-37
	#18.41	Personal Activities During Business Trips	3-37
	#18.42	Trips Having Business and Non-Business Purpose	3-39
#19.00		USE OF FACILITIES PROVIDED BY THE EMPLOYER	3-39
	#19.10	Bunkhouses	3-39
	#19.20	Parking Lots	3-41
	#19.30	Lunchrooms	3-42
	#19.31	Injury Results from Worker's Personal Property	3-42
	#19.40	Medical Facilities	3-42
	#19.41	Adverse Reactions to Inoculations or Injections	3-43
#20.00		EXTRA-EMPLOYMENT ACTIVITIES	3-44
	#20.10	Participation in Competitions	3-44
	#20.20	Recreational, Exercise or Sports Activities	3-45
	#20.30	Educational or Training Courses	3-48
	#20.40	Provision of Clothing and Equipment Required for Job	3-48

	#20.41	Injuries Resulting from Workers Clothing or Footwear	3-49
	#20.50	Fund Raising, Charitable or Other Similar Activities	3-49
#21.00		PERSONAL ACTS	3-50
	#21.10	Lunch, Coffee and Other Breaks	3-50
	#21.20	Vacations	3-52
	#21.30	Payment of Wages or Salary	3-52
	#21.40	Acts for Personal Benefit of Principals of Business	3-53
#22.00		COMPENSABLE CONSEQUENCES OF WORK INJURIES	3-54
	#22.10	Further Injury or Increased Disablement Resulting from Treatment	3-54
	#22.11	Disablement Caused by Unauthorized Surgery	3-55
	#22.12	Acceleration of Treatment	3-56
	#22.13	Activities at Home	3-56
	#22.14	Treatment Unrelated to Injury	3-56
	#22.15	Travelling To and From Treatment	3-57
	#22.20	Subsequent Injuries Occurring Otherwise than in the Course of Treatment	3-59
	#22.21	Activities on Board Premises or at Other Premises under Board Sponsorship	3-60
	#22.22	Suicide	3-60
	#22.23	Criminal Proceedings	3-61
	#22.30	Diseases or Other Conditions Resulting from Trauma	3-61
	#22.31	Multiple Sclerosis	3-61
	#22.32	Cancer	3-61
	#22.33	Psychological Problems	3-62
	#22.34	Alcoholism and Drug Dependency Problems	3-63
	#22.35	Pain and Chronic Pain	3-63

#23.00	REPLACEMENT AND REPAIR OF ARTIFICIAL APPLIANCES, EYEGASSES, HEARING AIDS, AND DENTURES – SECTION 21(8)	3-66
#23.10	Meaning of Authority in Section 21(8)	3-66
#23.20	Appliances Covered by Section 21(8)	3-67
#23.30	Meaning of Damaged or Broken under Section 21(8)	3-67
#23.40	Meaning of Accident under Section 21(8)	3-67
#23.50	Meaning of Corroboration in Section 21(8)	3-69
#23.60	Meaning of Fault in Section 21(8)	3-70
#23.70	Compensation Payable under Section 21(8)	3-71
#24.00	FEDERAL GOVERNMENT EMPLOYEES	3-71
NOTES		3-73

#### **CHAPTER 4 – COMPENSATION FOR OCCUPATIONAL DISEASE**

#25.00	INTRODUCTION	4-1
#25.10	Legislative Requirements	4-1
#26.00	THE DESIGNATION OR RECOGNITION OF AN OCCUPATIONAL DISEASE	4-2
#26.01	Recognition by Inclusion in Schedule B	4-3
#26.02	Recognition under Section 6(4.2)	4-4
#26.03	Recognition by Regulation of General Application	4-4
#26.04	Recognition by Order Dealing with a Specific Case	4-6
#26.10	Suffers from an Occupational Disease	4-8
#26.20	Establishing Work Causation	4-8
#26.21	Schedule B Presumption	4-8
#26.22	Non-Scheduled Recognition and Onus of Proof	4-10
#26.30	Disabled from Earning Full Wages at Work	4-12
#26.50	Natural Degeneration of the Body	4-13
#26.55	Aggravation of a Disease	4-13
#26.60	Amending Schedule B	4-14

#27.00	ACTIVITY-RELATED SOFT TISSUE DISORDERS OF THE LIMBS	4-15
#27.10	ASTDs Recognized by Inclusion in Schedule B	4-17
#27.11	Bursitis	4-17
#27.12	Tendinitis and Tenosynovitis	4-19
#27.13	Hand-Arm Vibration Syndrome (HAVS)	4-22
#27.14	Hypothenar Hammer Syndrome	4-25
#27.20	Tendinitis/Tenosynovitis and Bursitis Claims Where No Presumption Applies	4-25
#27.30	ASTDs Recognized by Regulation	4-28
#27.31	Epicondylitis	4-28
#27.32	Carpal Tunnel Syndrome	4-29
#27.33	Other Peripheral Nerve Entrapments and Stenosing Tenovaginitis	4-31
#27.34	Disablement from Vibrations	4-31
#27.35	Unspecified or Multiple-Tissue Disorders	4-31
#27.40	Risk Factors	4-32
#28.00	CONTAGIOUS DISEASES	4-38
#28.10	Scabies	4-40
#29.00	RESPIRATORY DISEASES	4-41
#29.10	Acute Respiratory Reactions to Substances with Irritating or Inflammatory Properties	4-41
#29.20	Asthma	4-42
#29.30	Bronchitis and Emphysema	4-44
#29.40	Pneumoconioses and Other Specified Diseases of the Lungs	4-45
#29.41	Silicosis	4-45
#29.42	Meaning of Disabled from Silicosis	4-46
#29.43	Exposure to Silica Dust Occurring Outside the Province	4-46
#29.45	Pneumoconiosis	4-47

	#29.46	Asbestosis	4-47
	#29.47	Diffuse Pleural Thickening or Fibrosis and Benign Pleura Effusion	4-47
	#29.48	Mesothelioma	4-48
	#29.50	Presumption Where Death Results from Ailment or Impairment of Lungs or Heart	4-48
#30.00		CANCERS	4-49
	#30.10	Bladder Cancer	4-49
	#30.20	Gastro-intestinal Cancer	4-52
	#30.50	Contact Dermatitis	4-53
	#30.70	Heart Conditions	4-55
#31.00		HEARING LOSS	4-55
	#31.10	Date of Commencement of Section 7	4-57
	#31.20	Amount and Duration of Noise Exposure Required by Section 7	4-57
	#31.30	Application for Compensation under Section 7	4-58
	#31.40	Amount of Compensation under Section 7	4-59
	#31.50	Compensation under Section 7	4-61
	#31.60	Reopenings of Section 7 Pension Decisions	4-62
	#31.70	Compensation for Non-Traumatic Hearing Loss under Section 6	4-63
	#31.80	Commencement of Permanent Disability Periodic Payments under Sections 6 and 7	4-64
	#31.90	Assessment of Permanent Disability Awards for Traumatic Hearing Loss under Section 5(1)	4-65
#32.00		OTHER MATTERS	4-65
	#32.10	Psychological/Emotional Conditions	4-65
	#32.15	Alcoholism	4-65
	#32.50	“Date of Injury” for Occupational Disease	4-66
	#32.55	Time Limits and Delays in Applying for Compensation	4-66
	#32.56	Applicants Who File Within Three Years	4-67

	#32.57	Applicants Who File Beyond Three Years	4-67
	#32.58	Newly Recognized Occupational Diseases	4-68
	#32.59	Discretion to Pay Compensation	4-70
#32.80		Federal Government Employees	4-71
	#32.85	Meaning of "Industrial Disease" under Government Employees Compensation Act	4-71

NOTES			4-72
-------	--	--	------

## **CHAPTER 5 – WAGE-LOSS BENEFITS**

#33.00		INTRODUCTION	5-1
#34.00		TEMPORARY TOTAL DISABILITY PAYMENTS	5-1
	#34.10	Meaning of Temporary Total	5-1
		#34.11 Selective/Light Employment	5-2
		#34.12 Worker in Receipt of Permanent Disability Award	5-4
	#34.20	Minimum Amount of Compensation	5-5
	#34.30	Commencement of Payment	5-5
		#34.31 Worker Continues to Work After Injury	5-6
		#34.32 Strike or Other Lay-Off on Day Following Injury	5-6
	#34.40	Pay Employer Claims	5-7
		#34.41 Vacation Pay	5-8
		#34.42 Termination Pay	5-8
	#34.50	Duration of Wage-Loss Payments	5-9
		#34.51 Other Factors Prevent Return to Employment	5-9
		#34.52 Workers Undergoing Educational or Training Program	5-10
		#34.53 Termination at a Future Date	5-12

#70.00	AVERAGE EARNINGS ON REOPENED CLAIMS	9-27
#70.10	Disability Occurring Within Three Years of Injury	9-27
#70.20	Reopenings Over Three Years	9-29
#70.30	Permanent Disability Awards	9-35
#71.00	AVERAGE NET EARNINGS	9-35
#71.10	Short-term Average Net Earnings	9-35
#71.20	Long-term Average Net Earnings	9-37
#71.30	Insufficient Information	9-38
#71.40	Adjustments	9-39
NOTES		9-40

## **CHAPTER 10 – MEDICAL ASSISTANCE**

#72.00	INTRODUCTION	10-1
#73.00	RIGHT OF WORKER TO HEALTH CARE BENEFITS	10-1
#73.01	Assessment of Services and Personal Supports Prior to Retirement	10-1
#73.10	Prior to Adjudication	10-2
#73.20	Duration of Medical Assistance	10-2
#73.30	Suspended Claims	10-2
#73.40	Approved Health Care Plans/ <i>Canada Shipping Act</i>	10-2
#73.50	Out-of-Province Treatment	10-3
#73.51	Injury Outside the Province	10-3
#73.52	Worker Injured Near the Provincial Border	10-3
#73.53	Worker Leaves the Province to Obtain Specialized Treatment	10-3
#73.54	Worker Voluntarily Leaves the Province	10-4
#74.00	PHYSICIANS AND QUALIFIED PRACTITIONERS	10-4
#74.10	General Position of Physicians and Qualified Practitioners	10-4

#74.20	Chiropractors	10-5
#74.21	Duration of Treatment	10-5
#74.22	Scope of Chiropractic Treatment	10-6
#74.23	Examination by the Board	10-7
#74.24	Consultation with Another Chiropractor	10-8
#74.25	Physiotherapy	10-8
#74.26	Belts and Back Supports	10-8
#74.27	X-rays	10-8
#74.30	Dentists	10-9
#74.40	Naturopathic Physicians	10-9
#74.50	Selection of Physician or Qualified Practitioner	10-10
#74.60	Concurrent Treatment	10-11
#75.00	HEALTH CARE RENDERED BY PERSONS OTHER THAN PHYSICIANS OR QUALIFIED PRACTITIONERS	10-12
#75.10	Physiotherapists	10-12
#75.12	Physiotherapy Given Privately	10-12
#75.20	Nursing Services	10-13
#75.30	Dental Mechanics	10-14
#75.40	Health Spas and Public Swimming Pools	10-14
#76.00	HOSPITALS AND OTHER INSTITUTIONS	10-14
#76.10	In-patient Treatment	10-14
#76.20	Short Stay Patients	10-14
#76.30	Private Hospitals	10-15
#76.40	Laboratory Procedures	10-15
#76.50	Application of Compensation to Worker's Maintenance in Hospital	10-15
#77.00	DRUGS, APPLIANCES, AND OTHER SUPPLIES	10-15
#77.10	General Position	10-15
#77.20	Types of Supplies and Appliances	10-16
#77.21	Eyeglasses	10-16
#77.22	Hearing Aids	10-17

	#77.23	Artificial Limbs	10-17
	#77.24	Medical Equipment	10-18
	#77.25	Boots and Shoes	10-18
	#77.26	Belts and Braces	10-18
	#77.27	Home and Vehicle Modifications	10-19
	#77.28	Medical Supplies for Paraplegics and Quadriplegics	10-19
	#77.29	Miscellaneous Items	10-19
	#77.30	The Prescription of Narcotics and Other Drugs of Addiction	10-20
#78.00		DIRECTION, SUPERVISION, AND CONTROL OF HEALTH CARE	10-21
	#78.10	Direction, Supervision, and Control of Treatment	10-21
	#78.11	Authorization of Elective Surgery	10-22
	#78.12	Worker Engages in Insanitary or Injurious Practices	10-23
	#78.13	Worker Refuses to Submit to Medical Treatment	10-25
	#78.14	Acupuncture	10-25
	#78.20	Examinations and Consultations	10-26
	#78.21	Examination at the Board	10-26
	#78.22	Consultation with Specialists	10-27
	#78.23	Psychiatric Treatment and Consultation	10-28
	#78.24	Failure to Attend, or Obstruction of, Examination	10-28
	#78.30	Fees or Remuneration	10-29
	#78.31	Adjudication of Health Care Benefits Accounts	10-29
	#78.32	Reversal of Decision on Review or Appeal	10-30
	#78.33	Form Fees	10-31
#79.00		CLOTHING ALLOWANCES	10-32

#80.00	PERSONAL CARE EXPENSES OR ALLOWANCES	10-33
	#80.10 Levels of Personal Care Allowances	10-33
	#80.20 Amounts Payable at Each Level	10-35
	#80.30 Payment Procedure	10-35
	#80.40 Worker Requires Institutional Care	10-35
#81.00	INDEPENDENCE AND HOME MAINTENANCE ALLOWANCE	10-36
#82.00	TRANSPORTATION ALLOWANCES	10-38
	#82.10 Eligibility for Transportation	10-38
	#82.11 Worker Bypasses Nearby Medical Facilities	10-39
	#82.20 Amount of Reimbursement	10-40
	#82.30 Manner of Payment	10-42
	#82.40 Transportation Provided by the Employer	10-42
	#82.50 Flight Changes	10-43
#83.00	SUBSISTENCE ALLOWANCES	10-43
	#83.10 Eligibility for Subsistence	10-43
	#83.11 Travelling Companions	10-44
	#83.12 Visits Home by Worker	10-46
	#83.13 Income Loss	10-46
	#83.20 Rates of Subsistence	10-46
	#84.20 Right of Eligible Workers to Choose Own Accommodation	10-47
#84A.00	HOMEMAKERS SERVICES	10-48
	NOTES	10-49

## **CHAPTER 11 – VOCATIONAL REHABILITATION**

C11-85.00	Principles and Goals
C11-86.00	Eligibility Criteria
C11-86.10	Referral Guidelines
C11-87.00	Process
C11-88.00	Nature and Extent of Programs and Services

	#97.34	Conflict of Medical Opinion	12-30
	#97.35	Termination of Benefits	12-31
	#97.40	Disability Awards	12-32
	#97.50	Rumours and Hearsay	12-32
	#97.60	Lies	12-33
#98.00		INVESTIGATION OF CLAIMS	12-33
	#98.10	Powers of the Board	12-33
	#98.11	Powers of Officers of the Board	12-33
	#98.12	Examination of Books and Accounts of Employer	12-34
	#98.13	Medical Examinations and Opinions	12-34
	#98.20	Conduct of Inquiries	12-35
	#98.21	Place of Inquiry	12-35
	#98.22	Failure of Worker to Appear	12-36
	#98.23	Representation	12-36
	#98.24	Presence of Employer	12-36
	#98.25	Oaths	12-36
	#98.26	Witnesses and Other Evidence	12-37
	#98.27	Cross-examination	12-37
#99.00		DISCLOSURE OF INFORMATION	12-37
	#99.10	Disclosure of Issues Prior to Adjudication	12-39
	#99.20	Notification of Decisions	12-39
	#99.21	Notification of Rights of Review and Appeal	12-41
	#99.22	Procedure for Handling Complaints or Inquiries About a Decision	12-42
	#99.23	Unsolicited Information	12-42
	#99.24	Notification of Permanent Disability Awards	12-44
	#99.30	Disclosure of Claim Files	12-44
	#99.31	Eligibility for Disclosure	12-45
	#99.32	Provision of Copies of File Documents	12-46

	#99.33	Personal Inspection of Files	12-46
	#99.34	Disclosure	12-47
	#99.35	Complaints Regarding File Contents	12-47
#99.40		Tape Recordings of Interviews	12-48
#99.50		Disclosure to Public or Private Agencies	12-48
	#99.51	Legal Matters	12-49
	#99.52	Other Workers Compensation Boards	12-49
	#99.53	Government of Canada	12-49
	#99.54	Canada Pension Plan	12-49
	#99.55	Ministry of Social Services	12-50
	#99.56	Police	12-50
	#99.57	<i>Government Employees Compensation Act</i>	12-50
#99.60		Information to Other Board Departments	12-50
#99.70		Media Enquiries or Contacts	12-50
#99.80		Insurance Companies	12-51
#99.90		Disclosure for Research or Statistical Purposes	12-51
#100.00		REIMBURSEMENT OF EXPENSES	12-52
	#100.10	Claimants	12-52
	#100.12	Claims or Review Inquiries	12-53
	#100.13	Medical Review Panels	12-53
	#100.14	Amount of Expenses	12-53
	#100.15	Worker Resides Outside the Province	12-54
#100.20		Employers	12-54
#100.30		Witnesses and Interpreters	12-54
#100.40		Fees and Expenses of Lawyers and Other Advocates	12-55
#100.50		Expenses Incurred in Producing Evidence	12-55
#100.60		Decision on Expenses	12-56
#100.70		The Awarding of Costs	12-56

Very detailed registration rules concerning independent firms, labour contractors, and workers are outlined in the policies in Items AP1-1-2, AP1-1-3, AP1-1-5 and AP1-1-7 of the *Assessment Manual*.

**EFFECTIVE DATE:** March 18, 2003 (as to numerical references to the policies in Items AP1-1-2, AP1-1-3, AP1-1-5 and AP1-1-7 in the *Assessment Manual*)  
**APPLICATION:** Not applicable.

## **#6.20 Voluntary and Other Workers Who Receive No Pay**

Usually a "worker" is paid. Therefore, it is not surprising that voluntary or other workers receiving no payment for their work are not generally considered workers under the *Act*. On the other hand, some workers of this type are expressly included within the scope of the *Act*, and the Board is given express power to admit others at its discretion. Furthermore, the receipt of some sort of payment by such workers may lead to their being workers under the *Act*. Further information about volunteers can be found in the policies in Items AP1-1-5 and AP1-3-1 of the *Assessment Manual*.

**EFFECTIVE DATE:** March 18, 2003 (as to numerical references to the policies in Items AP1-1-5 and AP1-3-1 in the *Assessment Manual*)  
**APPLICATION:** Not applicable.

## **#7.00 SPECIFIC INCLUSIONS IN DEFINITION OF WORKER**

Section 1 includes within the *Act's* basic definition of "worker" certain classes of people who might otherwise not be covered. Those classes of people are discussed in detail in the policies in Items AP1-1-1, AP1-1-3, AP1-1-5, AP1-1-7 and AP1-97-1 of the *Assessment Manual*.

**EFFECTIVE DATE:** March 18, 2003 (as to numerical references to the policies in Items AP1-1-1, AP1-1-3, AP1-1-5, AP1-1-7 and AP1-97-1 in the *Assessment Manual*)  
**APPLICATION:** Not applicable.

## **#7.10 Coverage for Volunteer Firefighters**

Individuals volunteering as a firefighter for a municipality or other form of local government are given coverage by the definition of "worker" under section 1 of the *Act*.

A volunteer firefighter may also include an individual at the scene of a fire, who is requested to assist by the Fire Chief, or authorized designate, and whose name is recorded. Only those individuals under the direction and control of the Fire Chief or authorized designate are covered.

A volunteer firefighter may be entitled to compensation for injuries or death arising out of and in the course of the activities of the fire department.

#### **A. Travel**

Volunteer firefighters are not covered for injuries or death which occurs while routinely commuting to and from the fire department.

A volunteer firefighter's travel may be considered part of his or her activities of the fire department when:

- in response to an emergency call out, the volunteer firefighter is directed by the Fire Chief or authorized designate, to travel to the fire hall, a fire or other site of emergency; and
- while returning to the volunteer's home or regular job after attending to the emergency duties, via the most direct route without departure for personal reasons.

If the volunteer firefighter's injury or death results primarily from the activity associated with the urgency of the preparation for travel, it may be considered to arise out of and in the course of the activities of the fire department, and therefore be compensable. This is an exception to the general rule that workers who are employed to travel are considered to be in the course of the employment only from the time the worker commences travel on the public roadway.

#### **B. Emergency Response Duties**

In addition to fighting fires, a volunteer firefighter's duties may also include responding to various emergency situations such as:

- facilitating evacuations;
- performing rescues;
- controlling hazardous substances;
- providing traffic control;
- disaster planning/response; and
- other related duties assigned by the Fire Chief or designate.

### **C. Participation in Practices and Drills**

An injury or death that occurs during a volunteer firefighter's participation in practices or drills may be considered to arise out of and in the course of the activities of the fire department, if participation was undertaken at the direction of the Fire Chief or authorized designate, regardless of whether the practice or drill takes place at the fire hall or some off-site location.

Practices include training sessions that involve the teaching of vocational or practical skills specifically related to those used within the fire department, such as live firefighter training.

### **D. Other Employment Activities**

#### **i. Maintenance Duties**

An injury or death that occurs during a volunteer firefighter's maintenance of the building or equipment within the environs of the fire hall may be considered to arise out of and in the course of the activities of the fire department, where the volunteer firefighter is authorized and under the direct supervision and control of the Fire Chief or authorized designate.

#### **ii. Public Relations Activities**

An injury or death that occurs during a volunteer firefighter's participation in public relations activities may be considered to arise out of and in the course of the activities of the fire department.

Public relations activities may include participation in recruitment, charity drives and safety education.

Factors that may weigh in favour of coverage for injuries or death that occur during a volunteer firefighter's participation in public relations activities, include whether the participation:

- is for the benefit of the fire department;
- was undertaken at the direction of the Fire Chief or authorized designate;
- involved using equipment supplied by the fire department;
- was during a time when the fire department was operational; or
- was considered to be part of the volunteer firefighter's duties.

No single factor is determinative. The more tenuous the connection to the activities of the fire department, the less these factors favour coverage.

**EFFECTIVE DATE:** October 1, 2007

**CROSS-REFERENCE:** Policy items #14.00, *Arising Out of and in the Course of Employment*; #18.00, *Travelling To and From Work*; #20.00, *Extra-Employment Activities*; #20.20, *Recreational, Exercise or Sports Activities*; #20.30, *Education or Training Courses* and #20.50, *Fund Raising, Charitable or Other Similar Activities*

**APPLICATION:** Applies to all injuries on or after October 1, 2007.

## **#8.00 ADMISSION OF WORKERS, EMPLOYERS, AND INDEPENDENT OPERATORS**

The *Act* contains powers to admit workers, employers and independent operators.

A discussion of the situations where coverage may be extended under sections 2 and 3 of the *Act* is found in the policies in Items AP1-1-6, AP1-2-2, AP1-2-3 and AP1-3-1 of the *Assessment Manual*.

**EFFECTIVE DATE:** March 18, 2003 (as to numerical references to the policies in Items AP1-1-6, AP1-2-2, AP1-2-3 and AP1-3-1 in the *Assessment Manual*)

**APPLICATION:** Not applicable.

## **#8.10 Federal Government Employees**

The *Government Employees Compensation Act* grants "employees" of the Federal Government usually employed in the province the same rights to compensation as non-Federal employees. The definition of "employee" is given in section 2 of this *Act* and takes the form of five alternative definitions which are as follows:

- "(a) any person in the service of Her Majesty who is paid a direct wage or salary by or on behalf of Her Majesty,
- (b) any member, officer or employee of any department, company, corporation, commission, board or agency established to perform a function or duty on behalf of the Government of Canada who is declared by the Minister with the approval of the Governor in Council to be an employee for the purposes of this *Act*,

- (c) any person who, for the purpose of obtaining employment in any department, company, corporation, commission, board or agency established to perform a function or duty on behalf of the Government of Canada, is taking a training course that is approved by the Minister for that person,
- (d) any person employed by any department, company, corporation, commission, board or agency established to perform a function or duty on behalf of the Government of Canada, who is on leave of absence without pay and, for the purpose of increasing his skills used in the performance of his duties, is taking a training course that is approved by the Minister for that purpose, and
- (e) any officer or employee of the Senate, the House of Commons or the Library of Parliament".

This definition is wide enough to cover most Federal employees, whether employed directly by the Government or by some statutory body. For example, it covers post office workers. The definition also includes certain persons taking training courses relating to their employment with the Government.

Any person appointed by authority of the Chief Electoral Officer and the *Canada Election Act* to prepare for and hold a Federal election is considered as an employee of the Federal Government for the purposes of the *Government Employees Compensation Act*. This definition includes Returning Officers, Election Clerks, Enumerators, Stenographers, Typists, Poll Clerks and a Constable.

Effective November 10, 1976, employees of the Bank of Canada are considered employees under the *Government Employees Compensation Act*.



- During a prison riot, inmates hold a guard hostage. The guard is subsequently diagnosed by a physician or psychologist as suffering from a mental condition described in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, and requires time off from work to recover.
- A female worker attends at work and is confronted by her male supervisor who sexually assaults her. As an immediate and direct result of the assault, the worker suffers an acute reaction and is subsequently diagnosed with a mental condition described in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*. In addition to a potential claim for physical injury, the worker may be entitled to compensation for mental stress.

Examples where there is likely no entitlement to compensation for mental stress:

- A worker is subjected to frequent sexual innuendo, humour in poor taste, practical jokes, and other forms of inappropriate attention from co-workers. One day the worker calls in to say the stress is too much, and he/she cannot work.
- A worker in a machine shop characterized by high levels of sudden noise calls in one morning to say he/she is unable to work due to mental stress. The worker also cites impossibly high production quotas, machine-pacing of work and constant threats of termination by the foreperson as reasons for the mental stress.

**Effective Date:** April 1, 2007

**Application:** Applies to all decisions, including appellate decisions, made on or after April 1, 2007.

**History:** December 31, 2003 – Revised to reflect amendments to section 5.1 of the *Act*.

## **#13.40 Infectious Agent or Disease Exposures**

A worker may be entitled to compensation in respect of an infectious agent or disease exposure where the exposure:

- (a) occurs as a compensable consequence of a personal injury (e.g. where a rabid dog bites a veterinarian, breaking the veterinarian's skin,

the exposure to rabies is a compensable consequence of the broken skin);

- (b) has caused the onset of an occupational disease; or
- (c) is accepted as compensable itself, in the absence of an objectively identifiable physical trauma, before conclusive evidence of the worker's infectious status is available (e.g. where exposure to an infectious disease with a long incubation period, such as HIV/AIDS or Hepatitis B, occurs as a result of infected bodily fluid splashing onto a worker's mucous membrane or non-intact skin).

An exposure, as described in (c) above, may be accepted as compensable itself, where the following four conditions are satisfied:

- (i) there is objective evidence that the worker was exposed, or was very likely to have been exposed, to an infectious agent or disease;
- (ii) the exposure arises out of and in the course of the worker's employment;
- (iii) there is a moderate to high risk that, based on the mechanism and amount of exposure that occurred, the exposure will result in the worker developing a disease with health consequences that are so serious it may be life-threatening; and
- (iv) the effects of the exposure can be significantly mitigated or prevented by the immediate provision of post-exposure prophylaxis ("PEP").

Medical evidence is required to assess the degree of risk and necessity of PEP on a case-by-case basis.

For example, a compensable exposure may result where a patient's blood splashes into the eyes of an attending nurse. If there is objective evidence that the nurse was exposed to an infectious disease such as HIV (e.g. if the patient is known to be HIV-positive), and if a physician concludes there is a moderate to high risk the nurse will develop HIV, a potentially life-threatening disease which cannot be immediately detected following exposure, and if PEP will mitigate or prevent the onset of HIV, the exposure can be accepted as compensable.

If a worker has an adverse reaction to PEP or develops a disease following a compensable exposure, entitlement in respect of the resultant injury, increased disablement, disease or death is adjudicated in accordance with Board policies on compensable consequences of employment-related injuries.

No compensation is payable to a worker who withdraws from work or changes employment because of concern that exposure to the conditions at work may cause an injury or disease which does not yet exist.

Wage loss benefits are not payable to a worker who remains off work or who changes employment to prevent a reoccurrence of a personal injury or occupational disease that has resolved, or to prevent an aggravation, activation, or acceleration of a personal injury or occupational disease which has stabilized or plateaued. However, vocational rehabilitation assistance may be provided to a worker in this situation. Where the worker is left with a permanent impairment, the worker may be entitled to a permanent disability award.

- EFFECTIVE DATE:** October 1, 2007
- CROSS REFERENCES:** Policy item #19.41, *Adverse Reactions to Inoculations or Injections*; policy item #22.00, *Compensable Consequences of Work Injuries*; policy item #25.10, *Legislative Requirements*; policy item #35.30, *Duration of Temporary Disability Benefits*; item C11-88.80, *Vocational Rehabilitation – Preventive Rehabilitation*
- HISTORY:** This policy replaces former policy item #32.60 of the *Rehabilitation Services and Claims Manual*, Volume II.
- APPLICATION:** To all infectious agent or disease exposures occurring on or after October 1, 2007

## **#14.00 ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT**

Before a worker becomes entitled to compensation for injury under the *Act*, the injury must arise out of and in the course of employment.

Confusion often occurs between the term “work” and the term “employment”. Whereas the statutory requirement is that the injury arise out of and in the course of employment, it is often urged that a claim should be disallowed because the injury is not work related or did not occur in the course of productive activity. There are, however, activities within the employment relationship which would not normally be considered as work or in any way productive. For example, there is the worker’s drawing of pay. An injury in the course of such activity is compensable in the same way as an injury in the course of productive work.

Lack of control of a situation by the employer is not a reason for barring a claim otherwise acceptable. Control by an employer is an indicator that a situation is covered under the *Act* at a particular time, but if that control does not exist there may be other factors which demonstrate an employment connection.

No single criterion can be regarded as conclusive for deciding whether an injury should be classified as one arising out of and in the course of employment. Various indicators can be and are commonly used for guidance. These include:

- (a) whether the injury occurred on the premises of the employer;
- (b) whether it occurred in the process of doing something for the benefit of the employer;
- (c) whether it occurred in the course of action taken in response to instructions from the employer;
- (d) whether it occurred in the course of using equipment or materials supplied by the employer;
- (e) whether it occurred in the course of receiving payment or other consideration from the employer;
- (f) whether the risk to which the employee was exposed was the same as the risk to which the employee is exposed in the normal course of production;
- (g) whether the injury occurred during a time period for which the employee was being paid;
- (h) whether the injury was caused by some activity of the employer or of a fellow employee;
- (i) whether the injury occurred while the worker was performing activities that were part of the regular job duties; and
- (j) whether the injury occurred while the worker was being supervised by the employer.

This list is by no means exhaustive. All of these factors can be considered in making a judgement, but no one of them can be used as an exclusive test.

**EFFECTIVE DATE:** June 1, 2004 (as to the addition of items i and j)  
**APPLICATION:** All injuries on or after June 1, 2004

## **#14.10 Presumption**

Section 5(4) provides that “In cases where the injury is caused by accident, where the accident arose out of the employment, unless the contrary is shown, it must be presumed that it occurred in the course of the employment; and where the accident occurred in the course of the employment, unless the contrary is shown, it must be presumed that it arose out of the employment.”

Thus for injuries resulting from an accident, evidence is only needed in the first instance to show either that the injury arose out of the employment or that it arose in the course of employment. The balance is presumed, unless there is

evidence to the contrary. Generally speaking, “out of the employment” concerns the cause of injury and “in the course of the employment” its time and place.

There are, however, some limitations on the use of this subsection.

First, it is not a conclusive presumption. It is rebutted if opposing evidence shows that the contrary conclusion is the more likely. All reasonable efforts must be made to obtain all available evidence.

Second, the presumption only operates when the injury results from an “accident”. This term is defined in section 1 to include a “. . . wilful and intentional act, not being the act of the worker . . .”, and a “. . . fortuitous event occasioned by a physical or natural cause”. This is not an exclusive definition of the term, but the word has been interpreted in its normal meaning of a traumatic incident. It has not, for example, been extended to cover injuries resulting from a routine work action or a series of such actions lasting over a period of time. The broad interpretation given to the term “accident” for the purpose of section 4(1) of the *Government Employees Compensation Act* does not apply to section 5(4) of the *B.C. Act*. (1)

## **#14.20 Occurrence or Non-Occurrence of a Specific Incident**

Where an injury occurs at work as a result of any traumatic experience or external cause, it is usually from an accident to which the presumption in section 5(4) applies. Thus, once it is established that the injury was caused by accident, and that the accident arose in the course of employment, the injury is presumed to have arisen out of the employment unless there is affirmative evidence that the injury was caused by factors external to the employment.

Consider the example of a worker who slips on the floor at work and is injured. Of course the worker could have slipped elsewhere and suffered a similar injury, but the worker didn't. The injury resulted from an accident in the course of employment. It is therefore presumed to have arisen out of the employment, and the injury is compensable, unless there is affirmative evidence that it was caused entirely by factors extrinsic to the employment.

Where there is no “accident”, there is no presumption under section 5(4) and the evidence must support a conclusion that the injury arose out of the employment as well as a conclusion that it arose in the course of the employment.

It is not a bar to compensation when an injury occurs over a period of time rather than resulting from a specific incident. To be compensable, however, the evidence must warrant a conclusion that there was something in the employment that had causative significance in producing the injury. A speculative possibility that this might be so is not enough.

This does not mean that the presence or absence of a specific incident is never relevant in the decision of a claim for compensation. What it does mean is that the absence of a specific incident is not of itself ground for denying a claim. The existence of a specific incident may still be relevant in that:

1. There are some disabilities that are classified as resulting from an “injury” if they arise out of a specific incident, but are classified as resulting from a “disease” if they occur over time. (2)
2. The etiology of a disabling condition is always relevant, and the presence or absence of a specific incident may have some evidentiary value in establishing whether it was caused by any feature of the employment.

## **#15.00 NATURAL CAUSES**

It is necessary to distinguish between injuries resulting from employment (which are compensable), and injuries resulting from purely natural causes (which are not compensable).

An injury is not compensable simply because it happened at work. It must be one arising out of and in the course of employment. If it happened at work, that usually indicates that it arose in the course of the employment. But it must also have arisen “out of” the employment. This means that there must have been something in the employment relationship or situation that had causative significance in producing the injury.

But if the injury was one arising out of purely natural phenomena – the internal workings of the human body – the employment situation may then be an irrelevant coincidence, and if so, the injury is not compensable.

### **#15.10 Worker Has Pre-existing Deteriorating Condition**

There may be cases where an organ of the body is deteriorating, possibly through disease, and it has reached a critical point at which it is likely to become a manifest disability. Some immediate activity might trigger the final breakdown.

But if it had not been one thing it would most likely have been another, so that it is only chance or coincidence whether it happened at work, at home, or elsewhere. The disability is one that the worker would not have escaped regardless of the work activity, and hence the causative significance of the work activity is so slight that the disability is treated as having resulted from the deteriorating condition. The disability is the result of natural causes and is not compensable. A Board decision illustrates the point:

“An office worker goes to work at an office that is located above a store. He walks up one flight of stairs to his office and has a heart attack at the top. The evidence indicates a deteriorating condition of his heart. It

indicates that a heart attack would not be unexpected and could be brought on by any activity at all. The disability is the result of natural causes and is not compensable.”

On the other hand, there may be other cases where the deteriorating condition was such that, in the absence of some exceptional strain or other exceptional circumstance, it was not likely to reach a critical point and become a disability about the time of the work injury. The worker could well have survived without disability for months or years if something exceptional in the course of his employment had not triggered the disability. Here the employment situation had substantial causative significance and the disability is compensable. An illustration of the point comes from a Board decision which stated in part:

“A transportation worker is moving a 300 lb. load up a flight of stairs when the load slips, causing fright and strain. The worker has a heart attack. Again the medical evidence indicates a deteriorating condition of the heart. But it supports a conclusion that the worker could well have survived for months or years without a heart attack had it not been for this unusually strenuous experience. Here the employment situation appears to have had causative significance and the heart attack is compensable.”

It is sometimes said that an event at work “triggered” the disability. This does not, however, determine whether the disability is compensable. The circumstances, including the condition of the worker, must be investigated in such cases to determine which of the above applies.

### **#15.15**      *Firefighters and Heart Injury*

The physical tasks involved in extinguishing fires and performing related rescue and hazardous materials responses expose firefighters to risks that are often unique to their profession. In this section the term “firefighter” refers to workers whose actual duties involve extinguishing fires and/or performing related rescue and hazardous materials duties. This section does not apply to workers employed in the firefighting profession who do not perform such duties.

Evidence that a worker’s job description includes the performance of such duties does not in itself render the worker a firefighter for the purposes of this section.

If during or within twenty-four hours immediately following attending a fire, rescue, or hazardous materials response the firefighter experiences:

- the onset of chest pain, collapse, cardiac arrest, or death due to myocardial infarction (heart attack); or
- the onset of symptoms, collapse, cardiac arrest, or death associated with an episode of acute cardiac arrhythmia;

a strong inference will arise that such condition was caused by the employment where during the course of attending such fire, rescue, or hazardous materials response the firefighter was exposed to:

- an intense physical effort sufficient to cause significantly increased heart rate and arterial blood pressure, or
- high temperatures and/or the wearing of personal protective equipment that significantly affected the firefighter's ability to thermo-regulate or that caused the firefighter to undergo intense physical effort, or
- environments containing asphyxiants such as carbon monoxide, carbon dioxide, or hydrogen cyanide, and that are likely to have produced oxygen deficiency in that firefighter.

The commencement of such twenty-four hour period begins when the firefighter leaves the scene of the fire, rescue, or hazardous materials response. Against this inference must be weighed any evidence which suggests that such cardiac condition is due to non-occupational factors. However, it is recognized that in rare cases the onset of symptoms associated with such cardiac condition may first occur between twenty-four and forty-eight hours following the above-described occupational exposure(s). Where the onset of such symptoms first occur more than twenty-four hours after the firefighter leaves the scene of the fire, rescue, or hazardous materials response, consideration is given to any evidence which may account for such delay in onset. In particular, consideration is given to all relevant clinical records, including hospital reports, that document the worker's condition.

Generally, the Board will determine that the firefighter's condition is not causally associated with the employment where the onset of symptoms, collapse, cardiac arrest, or death due to the above-described cardiac condition occurs:

- more than forty-eight hours following the time when the firefighter left the scene of such fire, rescue or hazardous materials response; or
- during or immediately following the performance of non-occupational activities that are likely to have caused the firefighter to experience significantly altered cardiovascular or respiratory function.

Against this inference must be weighed any evidence which supports the claim.

Where one of the above-described conditions is determined to be compensable, the Adjudicator must determine whether the worker was suffering from a pre-existing or underlying condition such as coronary artery disease. See policy items #15.00, #15.10 and #30.70. Time loss and health care expenses that are solely attributable to treatment of the pre-existing or underlying condition through such interventions as angioplasty, coronary bypass and/or medications, are compensable only in circumstances where the pre-existing or underlying

condition is compensable. Consideration will also be given to proportionate entitlement under section 5(5) and to relief of costs under section 39(1)(e) of the Act (also see policy items #113.20 and #115.30).

See policy item #7.10 regarding volunteer members of a fire brigade.

## **#15.20 Injuries Following Motions at Work**

This heading refers to cases where an injury has followed a motion at work, but there was no deteriorating condition to bring the case within policy item #15.10.

If a job requires a particular motion, and that motion results in injury, that is an indication that the injury arises out of the employment and is compensable. An example of this principle is a Board decision where the worker's injury resulted from bending down and, for this worker, bending down was a required movement of the job. Another Board decision illustrates the point as follows:

“An automobile mechanic working under a car is bending himself in unusual ways when he turns his head to look at something. Through some unusual movement of the neck muscles, he suffers a muscle strain. The employment activity may well have had causative significance and the injury is therefore compensable.”

The same applies where a job requires a series of different motions, and an injury results from the series.

On the other hand, there may be situations where an injury resulted from some motion of the human body that was not required as part of the job. This would be an indication that the injury would not be compensable. Suppose, for example, that on walking along a road on an industrial site in the course of employment, a worker's head turns sideways as a matter of curiosity to see what someone is doing. Because of some peculiar movement in the neck muscles, a muscle strain occurs. That would not be an injury “arising out of” the employment, and therefore not compensable. Again, suppose a worker is using the toilet at work and, in doing so, suffers an injury resulting only from the bowel movement. That would not be compensable.

The injury may result not from any particular motion at any particular time and place, but rather from repetition of the same kind of motion over time, perhaps several weeks, perhaps several years. If the motion is one that the worker undertakes in the course of employment, or predominantly in the course of employment, this would be an indication that the resulting injury would be compensable. But if the motion is of a kind that is undertaken at home and in the worker's social life as well as at work, this would be an indication that the resulting injury was not compensable. This point is illustrated in another Board decision:

“If the injury is one that resulted from the natural condition of the worker together with the general activities of life, it would not be compensable simply because work was one of those activities. To be an injury arising out of the employment, there must be something in the employment that had a particular significance in producing the injury. For example, if a worker has an injury to his knee and medical evidence indicates that this is caused by the use of stairs, it would not be compensable simply because the worker uses stairs at work as well as at home and elsewhere.”

It may often, in practice, be difficult to distinguish between work-required and non-work-required motions. Moreover, a work-required motion will often be a motion which the worker commonly engages in at home. This would suggest that the illustrations set out above are contradictory. However, the point is that it is not enough to consider only whether the motion is one which is undertaken at home, or only whether the motion was required by the worker’s job. Illustrations are not intended to be substitutes for the exercise of judgment.

On the one hand, it is said that it should be sufficient to show only that the injury came on while the worker was at work. The difficulty with this argument is that it renders meaningless the first half of the test contained in section 5(1). If causation is to be measured solely by the fact of employment, why did the Legislature include a requirement that the injury must also “arise out of” the employment? Clearly something more is required.

On the other hand, it has been suggested the Board should disallow any claim for compensation where the motion which caused, or apparently caused, the injury is one which occurs constantly in the course of daily living. This argument would inevitably lead to absurd conclusions. Very little physical activity or body movement in a worker’s employment differs significantly from that at home. The result is that virtually every body motion or activity could be said to be “normal” or “natural”, capable of occurring off the job and therefore non-compensable. Clearly something less restrictive is required.

Claims of the kind under discussion here must be adjudicated with great care. Nevertheless, the necessity for the exercise of judgment will result occasionally in what may appear to be inconsistency or the application of slightly different criteria. This is inevitable in any situation where it is virtually impossible to draw a line. It is not advisable nor just to state that claims for injuries without accident can only be accepted where there was some demonstrable act on the part of the worker which was so directly connected with work that the relationship is indisputable. In particular, the present inability of medical science to accurately pin-point the etiology of a great variety of spinal problems, many of which have been shown to arise from the most trivial of incidents, leads to a conclusion that, in appropriate circumstances, such incidents should be seen as causative and if they occur while at work, the resulting injury must be compensable. On the other hand, the simple act of walking up stairs or turning one’s head to speak to a co-

worker or of looking down at one's hands while performing a certain job, fall so clearly into the realm of "natural" or "normal" bodily functions that the only connection between them and the employment is the coincidental fact that the worker was on the job at the time.

Simply by adding a few more facts to these situations or others it might well be possible, in individual cases, to find that a work relationship existed. For example, (and these examples are not to be taken out of context without consideration of the discussion above), if the worker were forced into an awkward position in order to properly perform the job and either while in that position or when arising from it suffered a sudden and severe onset of pain and discomfort, and the evidence shows no previous difficulty, it might well be that the only reasonable conclusion is that the apparently minor incident was causative. Similarly, if a worker bends to pick up an object, and that motion is required by the job (e.g. a piece of debris while on clean-up, a piece of mail while working in the mail room, an item of equipment or machinery in a plant) and, unrelated to the lifting of the object, suffers an onset of disabling pain, that apparently insignificant motion might also establish some work relationship. In either of these cases, the motion although natural was performed as a matter of the worker's duties and may in that sense gain "work" status.

### **#15.30 Recurring Temporary Disabilities**

This refers to cases where a worker is subject to recurring disabilities of a temporary nature whether at work or elsewhere. A common example would be a worker who is subject to epileptic fits. Illustrations of the principles are:

1. A worker suffers an epileptic fit and is injured when hitting the floor. Both the fit and the injury result from natural causes and neither is compensable.
2. A worker suffers an epileptic fit, falls twelve feet from a scaffold, and suffers injuries on impact with the floor. Here the employment situation resulted in injuries beyond those that might have flowed from the natural causes, and though the fit itself is not a compensable injury, the injuries resulting from the fall from the scaffold are compensable.

The fit results from natural causes, and injuries resulting from the fit are not compensable. But if the employment situation results in injuries beyond those that might have flowed from natural causes, the additional injuries resulting from the employment situation are compensable.

Where a claim is allowed for an injury substantially due to a personal illness of the worker such as epilepsy, the costs are excluded from the employer's experience rating (see policy item #115.30).

## **#15.40 Ganglia**

Ganglia are generally not considered to be of traumatic origin. As such, most claims for these conditions are not deemed to have resulted from a worker's employment and are not acceptable.

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.worksafefbc.com](http://www.worksafefbc.com) website, under the Health Care Provider Section under Resources: [http://www.worksafefbc.com/for\\_health\\_care\\_providers/Assets/PDF/Post-op%20guidelines%20-%20Hernia.pdf](http://www.worksafefbc.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 actions or conduct may induce the Board to conclude that the injury did not arise out of and in the course of the employment.

## **#16.20 Horseplay**

A worker who is injured through participation in horseplay is not for that reason alone denied compensation. The conduct of the worker which caused the injury must be examined to determine whether it constituted a substantial deviation from the course of the employment. An insubstantial deviation does not prevent an injury from being held to have arisen in the course of employment.

No definite rules can be laid down as to what constitutes a substantial deviation. One factor to be considered is the degree of participation of the worker. For instance, a worker who instigates or provokes horseplay, or who has been involved in previous episodes of horseplay, will more likely be considered to have made a substantial deviation than one who simply reacts to actions commenced or provoked by someone else.

The duration and seriousness of a worker's horseplay is also of relevance in considering whether there has been a substantial deviation from the course of employment. For example, if a worker walks over to a co-employee to engage in a friendly word, and accompanies this with a playful jab in the ribs, this is a trivial incident which would probably be considered an insubstantial deviation. As Larson notes,

“At the other extreme, there are cases in which the prankster undertakes a practical joke which necessitate the complete abandonment of the employment and the concentration of all his energies for a substantial part of his working time on the horseplay enterprise.” (3)

When this abandonment is sufficiently complete and extensive, it must be considered a substantial deviation from the course of employment. It is also relevant to consider whether the “horseplay” involved the dropping of active duties calling for the worker's attention as distinguished from the mere killing of time while the worker had nothing to do. The duration and seriousness of a deviation from the course of employment which will be called substantial will be

somewhat smaller when the deviation necessitates the dropping of active duties than when it does not.

### **#16.30 Assaults**

In considering cases of assault, the first question is whether the worker was the aggressor and therefore the agent which caused the injuries. The answer to this question is not always clear cut and may involve an evaluation of the degree to which a worker is an aggressor in a given situation. However, the fact that a worker is less than friendly with another employee and is at least equally responsible for ill feeling that may prevail between them is not, by itself, grounds for disallowing a claim for injury arising out of an assault by that other employee.

The second question is whether there is a connection between the employment and the subject matter of the dispute which led to the assault or whether it was a purely personal matter. In the latter case, the claim is not acceptable.

Where an assault arises out of the worker's employment, no compensation is payable unless it also arises in the course of the employment.

The same principles apply if the assault is by someone other than a fellow employee.

### **#16.40 Injury While Doing Another Persons Job**

Some latitude must be given to workers to act upon their own initiative. It is clearly impossible for an employer to lay down fixed rules covering every detail of a worker's employment activity. Therefore, workers may be uncertain as to the limits of their work. A worker should not be prejudiced if the worker is careless or exercises bad judgment in an area where it is reasonable to exercise some discretion. Thus an act which is done bona fide for the purpose of the employer's business may form part of a worker's employment, even if not specifically authorized by the employer. For example, it has long been the policy of the Board to accept claims from workers injured as the result of some emergency action to protect their employer's property or to rescue their fellow workers. Suppose also that a worker, who has ceased to work at a particular machine, goes to the aid of a successor who is having trouble operating the machine. One would expect that the employer would not want the worker to refuse to assist the new employee on the technicality that it was not within the scope of the worker's employment.

On the other hand, there is a clear need to place some limit on the activities which form part of a worker's employment. Thus, for example, if an act is specifically prohibited by an employer or is known, or should reasonably have been known, to the worker to be unauthorized, or, if the worker has been

previously warned against doing other persons' jobs, the worker would not usually be covered merely because of a bona fide action for the benefit of the employer. On the other hand, it might be different if, for example, the employer had previously condoned a prohibited practice carried out by employees or some emergency forced a worker to act.

If a worker performs some work activity without the employer's instructions, this is an indicator that any resulting injury did not arise out of and in the course of the employment. On the other hand, this factor does not exclusively determine the compensability of the injury. It must be weighed along with the other factors set out in policy item #14.00 and any other relevant factors. If it is outweighed by other indicators that the injury arose out of and in the course of the employment, the injury will be compensable under the *Act*.

## **#16.50      Emergency Actions**

Where an emergency occurs at a time when a worker is in the course of employment, the worker is considered to be covered if injured when acting to protect a fellow worker or protect the employer's property. If, however, the action is that of a public spirited citizen, she or he would be doing no more than anyone would do, whether or not working for an employer at the time. This cannot be considered to be related to the employment.

However, there is an exception to this general proposition, notably where the injury occurs through the presence of a hazard on the premises of the employer.

The situation can perhaps best be illustrated by an example. Suppose a worker receives a telephone call at work indicating that there is a fire in a portion of the employer's premises. The worker races from the office and, due only to haste, trips over his or her own feet, falls and injures an arm. There is no doubt that in light of the relationship of the emergency to the employment this injury would be compensable. In other words, it would be found to have arisen out of the employment.

Suppose, then, that the same worker receives a telephone call to the effect that a family member has been seriously injured in an accident. Once again the worker races from the office and, due only to haste, falls and injures an arm. In these circumstances there is no relationship to the employment. The reason for the worker's departure is totally unrelated to the employment and nothing about the employment contributed to the injury. However, if the worker were to race from the office and trip over a poorly laid carpet, a relationship to the employment would be present. In other words, the injury would not have occurred had it not been for a hazardous condition on the employment premises.

Therefore, while it is incorrect to say that compensation will be payable when a worker is injured while leaving the premises of the employer for whatever reason, it is correct to say that any injury will be compensable which was suffered in any emergency and which also arose out of a hazard on the employment premises.

Even if the injury does not arise from a hazard of the employment premises, and the emergency does not concern a fellow worker or the employer's property, claims may still be accepted from workers who, in the ordinary course of their work, are situated in an environment which by its very nature may become the site of an emergency situation. An excellent example of this "positional risk" would be all employees in the various aspects of the operation of an airport. The Board is of the understanding that, for example, at Vancouver International Airport groups or "teams" are formed to act in cases of emergency. The members of these groups will be drawn from various aspects of the operation and the nature of their specific employment may be totally unrelated to emergency rescue. Baggage handlers or concession operators could not be considered to have as part of their employment the need to react in the event of a crash of an aircraft. Nevertheless, their very presence as employees at the airport places them in the position of being the logical choices to become members of such teams. Apart from this exception, the fact that the employment places one in a position to observe an emergency cannot be of itself a determinative factor in granting compensation.

If a worker's injury is the result of an emergency action to prevent a crime, there may be entitlement to benefits under the *Criminal Injury Compensation Act*. (4)

## **#16.60      Serious and Wilful Misconduct**

Section 5(3) provides that "Where the injury is attributable solely to the serious and wilful misconduct of the worker, compensation is not payable unless the injury results in death or serious or permanent disablement."

By the terms of section 5(3), the injury must be attributable "solely" to the worker's misconduct. Thus, for example, where the worker was impaired by reason of alcohol or other substances, investigation will have to be carried out to evaluate the extent of the impairment and its degree of responsibility in producing the injury in order to establish whether this requirement is met. See policy item #16.10 for further details.

The section only applies where the misconduct was serious and "wilful". In determining whether misconduct is wilful it must be considered whether the worker had pre-knowledge or voluntarily elected to break a rule. In other words, the worker must be aware of a rule and knowingly elect to break it.

The section does not bar a claim if the injury results in death or serious or permanent disablement. The word “serious” is used in a physical rather than an economic sense. Therefore, if for example a worker has suffered a sprained wrist or finger which causes only two or three weeks loss of wages, this may not be considered as a serious disablement even though the loss of earnings may cause a serious financial problem. However, if a disability is prolonged, it may be regarded as serious even though the initial injury appears minor.

Until September 27, 2002, where a claim involving serious and wilful misconduct is accepted, the cost of compensation paid after the first 13 weeks of disability is excluded from the employer’s experience rating (see policy item #115.30).

Effective September 28, 2002, where a claim involving serious and wilful misconduct is accepted, the cost of compensation paid after the first 10 weeks of disability is excluded from the employer’s experience rating (see policy item #115.30).

Before section 5(3) can be considered, it must have been determined under section 5(1) that the injury arose out of and in the course of the employment. The actions or conduct of the worker may induce the Board to conclude that the injury does not meet that requirement. If such a conclusion is reached, the claim will be denied even though the worker has suffered death or serious or permanent disablement.

## **#17.00 HAZARDS ARISING FROM NATURE**

An injury may result from natural elements. For instance, a worker may be stung by an insect or plant or suffer from exposure to extreme weather conditions. Compensation in these cases is limited to situations where the job is of such a nature as to place the worker in a greater position of hazard to these elements as compared with the public at large.

Some examples of the application of this rule are set out below.

### **#17.10 Insect Bites**

A logger stung while working in the bush would have a claim accepted, as would a letter carrier who is stung while walking through a flower garden in summer to deliver a letter. Claims have also been accepted from people bitten by tropical insects while unpacking bananas.

On the other hand, an office worker stung by a bee in the course of office work would not generally qualify.

## **#17.20 Plant Stings**

An employee of a florist shop is an obvious example of a person who could successfully claim for a plant sting.

## **#17.30 Frostbite, Sunburn and Heat Exhaustion**

If a worker is working outdoors in below freezing temperatures and sustains frostbite, a claim will qualify for acceptance as resulting from a work related hazard. The same would apply to a worker working for a prolonged period in a walk-in freezer.

Persons suffering abnormal exposure to the sun because of their employment are also covered.

The failure of a worker to wear protective clothing may in some cases be ground for denying a claim under section 5(3).

## **#17A.10 Commencement of Employment Relationship**

The commencement of compensation coverage is not marked by common law principles relating to the commencement of a contract of service. A decision must be made whether, having regard to the substance of the matter, an employment relationship had begun for compensation purposes.

For example, where the place of employment is some distance from the available labour market, workers may arrive at the place of employment in a number of ways. If workers go there of their own initiative looking for whatever jobs they may find, they take the risk of travel upon themselves. But if an employer extends its network of hiring arrangements to distant places, and induces a worker to leave a distant city and journey to the employer's place of work upon the promise of travel time and expenses, the journey becomes part of the employment relationship, and the hazards of the journey become risks of the employment.

A person offering services to an employer will often be told to come back at a certain time in the future when work might be available. A person may also be promised a specific job but the commencement date may be specified some weeks or months ahead. Such persons would not normally commence to be workers under the *Act* until they actually returned to the employer's premises at the future date and commenced work.

It is not essential that a person must actually have commenced productive work for an employer before being covered. If, for example, an injury took place while entering the employer's premises on the way to the first day of work the worker

may be covered. The employment relationship would have commenced at the moment of entry to the premises and would not have been delayed until completion of the necessary hiring formalities or actual commencement of work. Coverage might even commence earlier in the journey to work that morning if the situation falls within one of the other exceptional cases when travelling to work is regarded as part of the employment.

## **#17A.20 Termination of Employment Relationship**

The same principles apply to the termination of employment as to the commencement of employment. An employment relationship does not automatically terminate for compensation purposes when a contract of service is terminated by notice. Workers are covered for a reasonable period while winding up their affairs and leaving the employer's premises.

## **#18.00 TRAVELLING TO AND FROM WORK**

The general position is that accidents occurring in the course of travel from the worker's home to the normal place of employment are not compensable. But where a worker is employed to travel, accidents occurring in the course of travel are covered. This is so whether the travel is a normal part of the job or is exceptional.

### **#18.01 *Entry to Employers Premises***

Compensation coverage generally begins when the worker enters the employer's premises for the commencement of a shift, and terminates on the worker leaving the premises following the end of the shift. Thus where a worker is travelling to work by automobile, there is no coverage for compensation from home to the point of entry to the employer's premises, but there is coverage from there to the worker's particular place of work. However, a Board decision denied a claim from a worker who, having entered her employer's premises and decided not to cross a picket line, was injured before she had left those premises as the result of tripping over a cement abutment.

It is a responsibility of the employer to provide a safe means of access to and egress from the place of work. Thus where a worker is travelling by highway to a place of work that is not adjacent to the highway, and must cross other land before reaching the employer's premises, compensation coverage begins at the point of departure from the highway rather than the point of entry to the employer's premises.

It is not considered significant that a worker is injured while seeking to gain access to the employer's premises by a method that is probably different from that which the employer intends. In a Board decision, it was irrelevant that the

deceased fisher attempted to jump aboard his employer's boat rather than use a ladder that was available. However, the outcome might be different if the method used has been specifically forbidden by the employer and the worker is aware of this.

The worker in that decision was attempting to board the ship to sleep there in preparation for sailing the following day. It was not significant whether he was required to board the ship the night before, or whether he had an option about the time of boarding. He was in any event attempting to board the ship for the purpose of work the following day.

## **#18.10 Road Leading to Employers Premises**

The general rule is that there is no coverage while a worker is travelling along the roads which lie between the worker's place of residence and the employer's premises. However, in some cases, the nature of the road leading to the employer's premises may give coverage while on that road.

### **#18.11 *Captive Road Doctrine***

A "captive road" is one which is technically a public highway but as a practical matter leads only to the premises of the particular employer and is for practical purposes under the control of that employer. In such a case, the road might be classified as part of the employer's premises for compensation purposes. The case would be particularly strong if it was found that the employer made decisions on repairs. In a Board decision, the application of this doctrine was rejected because the road in question was used by at least three employers.

In another Board decision, a miner was killed in an automobile accident while driving home along the road leading from the mine where he worked. The mine was located in a park, 27 miles from the main road. The road also gave access to a public camp ground, 17 miles from the main road, and another work place of the same employer, 23 miles from the main road. There was no other highway access to the mine, and it was normal for workers of the employer to travel by automobile along the road. The claim was allowed on the grounds that the road was a "captive road" at the point where the accident occurred, 24 miles from the main road. The question whether the "captive road" terminated at the access to the public camp ground or the main road was left open.

It appeared that the title to the road vested in the Crown, and that it was probably a public highway right to the mine site. Both the Department of Highways and the employer participated in the original construction of the road. Since that time, however, the Department of Highways had not participated in the operation of the road. The Department of Highways had not placed its usual hazard signs on the road, nor had it participated in maintenance. Through its relations with the Crown, the employer appeared to be under a legal obligation to maintain the road

from the mine to the boundary of the park (seven miles from the main road), but in practice, it maintained the road all the way to the main road.

There was evidence that the public did use the road right up to the mine, but this use was by occasional tourists going nowhere in particular or by people looking for fishing spots. This limited use by the public was not inconsistent with the "Captive Road Doctrine".

In another case, the worker was injured in a motor vehicle accident while travelling from home along a private road owned, controlled and maintained by the employer. The argument that it was a "captive road" was rejected because the road also led to the plants of several other employers and a public recreation area which were located further along the road than the plant of the worker's employer. The use of the road by the public up to and beyond the employer's plant was significant. The further argument, that the claim should be accepted because the road formed part of the employer's premises, was also rejected. While it was agreed that, generally speaking, injuries occurring on the employer's premises were compensable, it was not accepted that the extent of the employer's premises for this purpose could simply be determined by whether the employer legally owns or controls the property in question. To take an obvious example, there would be no coverage if an employee were injured at the employer's home when invited there out of work hours on a purely social occasion. It is apparent, therefore, that regard must be had to other factors such as the use to which the land is normally put and its relationship to the operation of the employer's business.

The "Captive Road Doctrine" lays down situations when a road, though technically a public one, can, in effect, be regarded as part of the employer's premises for compensation purposes with the result that coverage extends to injuries occurring on it. This occurs when the road for practical purposes leads only to the employer's premises and can, therefore, be equated with a private road which is just an incidental feature to the employer's plant. The natural corollary of this doctrine is that, where a road is technically a private one, it should not be considered as part of the employer's premises where in reality it leads to the premises of several different employers and is indistinguishable from a public highway. The road is not then just an incidental feature of the plant of the one employer who happens to own the road. It appeared that roads leading to an employer's premises should be classified for compensation purposes by the real nature of their use and hazard. The Board should not be artificially distinguishing roads otherwise indistinguishable on the basis of legal ownership and control. It was concluded that the road concerned in this claim must in reality be considered as a public highway rather than a private road forming an adjunct to the employer's premises.

The Board's policy with regard to "captive roads" has never been that an injury occurring on such a road is compensable regardless of the circumstances of the injury. Just as an injury is not compensable just because it happens on the

employer's premises, an injury is not compensable just because it occurs on a "captive road". The circumstances surrounding the injury may indicate that, notwithstanding the place where it occurred, it did not arise out of and in the course of the employment. Therefore, a claim for an injury on a "captive road" was denied when the accident was due to the dangerous condition of the worker's own vehicle.

An injury on a "captive road" does not arise out of and in the course of the employment if the journey along that road is not for a legitimate purpose associated with the employment.

### **#18.12      *Special Hazards of Access Route***

Where a place of work is so located that for access and egress the worker must pass through special hazards beyond the ordinary risks of highway travel, an injury sustained from those hazards is one arising out of and in the course of employment. On the other hand, an injury to a worker on the way home from work, even though on the only egress route from the employer's premises, is not compensable if it results from other normal risks of highway travel, such as a collision between two automobiles.

In a Board decision, a dead-end street led to the employment premises of the worker and other employers. The worker was injured by a train while driving over a railway crossing situated close to the employer's premises on this road on her way home from work. Since this crossing differed from other crossings in the city and was of a type lacking typical safety features, it was a special hazard, and a claim in respect of the injury was allowed.

In another decision, it was argued that the accident resulted from a special hazard of the industrial environment, and therefore a hazard of egress from the employer's premises. In this connection, reference was made to the bends in the road being sharper in the mountains than was normal for lowland highways, to falling rock on the road, to crosswinds, and to ice patches in winter. While the evidence with regard to the existence of these conditions was accepted, they were seen as hazards of mountain highways rather than a special hazard of egress from this kind of work place. The claim was, therefore, not allowed under the special hazard doctrine. In another case, the argument was made that there were special hazards on the road to the employer's premises arising from poor road conditions due to snow. This was rejected because these conditions were no more than was to be ordinarily expected on any road during winter in the interior of the province.

For a claim to succeed on the grounds of a special hazard, the hazard need not lie on the only route to the employer's premises. It is sufficient if it is on the normal route to the place of work from the direction in which the worker is travelling.

If a worker is injured in the immediate approaches to the place of work, though still on the highway, that will be compensable if the hazard causing the injury is a spill-over from the employer's premises. For example, if an accident occurs through rush hour congestion right at the gates of the plant, that would be compensable, and the Board would certainly not measure by an exact line whether it occurred inside or just outside the gates.

## **#18.20 Provision of Transportation by Employer**

An employer may directly or indirectly provide transportation for its employees' journeys to and from work. In situations where this involves providing a specific vehicle such as, for example, a crew bus, in which the journeys are made, compensation coverage is generally extended to injuries occurring while travelling in this employer-owned vehicle. In some situations, the employer may let the worker choose her or his own mode of transportation, but pay for all or part of the costs of this transportation. The employer may also pay the worker a wage for the time spent in travelling. While these factors must be considered, the basic question to be determined is whether or not the worker is routinely commuting to or from work. The fact that coverage does not extend to include routine commuting could override the fact that the worker is being paid a travel allowance or a wage to cover the commuting. This is distinct from the crew bus situation described above which can be deemed to be an extension of the employer's premises.

## **#18.21 Provision of Vehicle by Employer**

In a Board decision, the worker was injured while travelling to work on a bus run by a company pursuant to a contract between the company and the employer. The employer argued that the rule outlined above did not apply because the bus service was not provided directly by the employer, but through an independent contractor. The bus company had complete control over the service which was used by other members of the public than the employer's workers. Employees paid a fare for riding the bus and had a choice as to whether to use this means of riding to work. In effect, the service was being equated with any other regular bus service run for the purpose of public transportation.

The argument that this rule did not apply was not accepted. Leaving aside the fact that control by the employer is not a necessary factor before compensation coverage exists, it was considered that the employer did in that case exercise a significant degree of control over the bus service. It was, to begin with, a party to the contract which set out the terms and conditions on which the service operated. The contract also allowed the employer to direct the amount of the fare paid by its employees and to enact rules or regulations which applied to the operation of the buses. The contract could be terminated by the employer on 90 days' notice. The bus service was not at all like a regular bus service open to the public. It was, in practice, used virtually exclusively by workers of the employer

and another authorized company and its use by other members of the public was by comparison minimal and unofficial. The fares paid by the employees were nowhere near to covering the cost of the service which was met by the employer and appeared to be token in nature.

Though the bus service was not specifically provided for in the collective agreement, it was a matter which had been the subject of a separate agreement between the union and the employer. The reasons for a reduction in fares resulting from this agreement were not known, but clearly could have had nothing to do with the economics of providing the service. This agreement pointed to the fact that the bus service was not an independent body and separate service which the employer had induced another company to operate but, rather, a service provided by the employer through the agency of another company, which was subject to its overall direction and control. There was no justification for distinguishing this type of case from one where the company directly provide the service itself using its own employees.

The same rule was also applied where, because of working overtime, the worker missed the regular bus service home provided by his employer. He was injured while travelling home in a taxi arranged and paid for by his employer and his claim for compensation was accepted. It made no difference that the collective agreement did not require the employer to provide the taxi.

This rule does not apply when the employer provides the worker with a vehicle for the purpose of work and allows personal use outside of work hours. An injury occurring while travelling in that vehicle to and from work will not be compensable just because the employer provided the vehicle. Nor would such an injury be compensable where the vehicle is the worker's own just because it is taken to work in order to be used in the course of employment.

## *#18.22 Payment of Travel Time and/or Expenses by Employer*

The payment of wages or travelling allowances etc. may in some circumstances be a factor to be considered, but it usually will not be a significant factor, nor is it ever the sole criteria in determining the acceptability of a claim.

Where the place of employment is some distance from the available labour market, workers may arrive at the place of employment in a number of ways. If workers go there of their own initiative looking for whatever jobs may be found, they take the risk of travel upon themselves. But if an employer extends the network of hiring arrangements to distant places, and induces a worker to leave a distant city and journey to the employer's place of work upon the promise of travel time and expenses, the journey becomes part of the employment relationship, and the hazards of the journey become risks of the employment.

In the Lower Mainland area, stevedores are normally required to report to the hiring hall in Vancouver in the morning. They are then dispatched to the various employers in the area. When dispatched outside the City of Vancouver itself, for example North Vancouver, stevedores have the option of transportation in their own vehicle or to use a taxicab at the employer's expense. No similar allowance is made within the city limits of Vancouver. In view of this exceptional circumstance, stevedores are covered under compensation from the point when they leave the city limits in which the hiring hall is located while travelling to a work place outside the city limits, whether they use a taxicab provided by the employer or use their own vehicle. No coverage applies when travelling to destinations within the city where the hiring hall is located.

The remoteness of a work site and the limited availability of transportation are factors which may suggest that a journey from the work site may be part of the employment. There is a difference between a journey between two established towns and cities with regular and established means of communication and a journey between one such town and a remote place consisting only of a work site. The fact that a flight is a scheduled one does not fundamentally alter the more hazardous nature of the latter type of journey, though a scheduled flight system may possibly provide greater safety than an unscheduled one.

### **#18.30 Journey to Work Also Has Employment Purpose**

There may be situations where the journey is not simply a routine matter of driving to and from work, but there are also some additional circumstances which connect the journey with some particular aspect of the worker's employment. This additional circumstance may be sufficient to bring all or part of the journey within the scope of the employment.

#### **#18.31 *Worker On Call***

Workers are not covered while routinely travelling to and from work simply because as part of their contract of employment, they are liable to be called out from their homes at any time to deal with a matter connected with their employment. They are, however, covered if because of an emergency or some other reason they have to make a special journey from their homes to their employer's premises or to some other place where the job has to be done. In this regard, they will be covered for compensation from leaving home until their return home, provided that they do not deviate from their route.

**Effective Date:** February 24, 2004 (to clarify that compensation will be provided to workers from leaving home until their return home. This revision supports the retirement of Decision No. 50 of the *Workers' Compensation Reporter* by remedying an ambiguity between that Decision and the policy item.)

**Application:** Applies to all decisions made on or after February 24, 2004.

## #18.32 *Irregular Starting Points*

There are a number of different situations that have to be considered under this heading. One is where the worker is injured in the course of a journey between home and a normal or regular operating base. That situation is substantially similar to the case of a worker travelling between home and a fixed place of employment and an injury occurring in the course of that journey would not be covered.

Another situation is where there is an injury occurring in the course of a journey between what might be called two working points. That is, where the worker terminates productive activity at one point and then has to travel to commence productive activity at another point. If that occurs in the course of a working day, then the travel is one of the requirements of the job. It is one of the functions that the worker has to perform as part of the employment whether or not the worker is paid for it. Where the worker terminates productive activity at one point and is required to commence productive activity at another point, travel between those points is part of the employment and is in the course of employment as long as the worker is travelling reasonably directly and is not making major deviations for personal reasons.

A different situation arises when the job function requires the worker, after first reporting to the employer's premises or assembly area, to travel to a work location. Clearly, the worker's travel from home to the employer's premises or assembly area would be considered commuting and, as such, would not warrant compensation coverage. The worker's travel from the employer's premises or assembly area to the point where he or she will begin work is normally covered as being in the course of employment. This situation is distinct from that of union members who go from a hiring hall to different work locations and, perhaps, to different employers each day. (See policy item #18.22, third paragraph, "Stevedores".)

A further situation arises when the job function requires the worker to report at what might be called irregular starting points. That is, different starting points on different days or different months and terminating employment at different termination points. This could apply, for example, to bus drivers. In cases where such a driver must first report to the depot to receive an assignment, travel from home to the depot would not be covered under compensation. The question as to whether the driver's travel from the depot to the point where the run will begin should be covered as being in the course of employment is distinct from that of union members who go from a hiring hall to different work locations and, perhaps, to different employers each day. There is only one employer in this case and the worker is sent from the employer's premises. In such a situation, once the worker has been dispatched from the depot to journey to the point where the run will begin, as long as the worker is proceeding toward that place with reasonable expedition and without substantial deviation, the worker should be considered to be travelling in the course of employment and hence covered

for compensation regardless of whether public or private transportation is used. The question has also been raised as to whether the driver would be covered for compensation in travelling from the finishing point to the depot at the finish of a shift. Where a driver has completed work and is returning to the depot and is travelling reasonably directly and does not make any major deviations for personal reasons, the driver would be considered in the course of employment until such time as the depot is reached.

Where a worker has a regular or usual place of employment and is assigned temporarily to work at a place other than the regular place of employment, the worker is covered for compensation while travelling to and from that temporary place, and this is so whether the worker goes there from the regular place of employment or goes there directly from home. The same rule applies, for example, to a delivery person who goes direct from home to make deliveries.

### **#18.33**      *Deviations From Route*

Where an employee is instructed by the employer to perform some activity related to work while on the way to or from the normal place of work, this does not necessarily provide coverage for the whole journey. Generally speaking, it will only provide coverage to the extent that the employee has, because of these instructions, to do something which would not normally be done while travelling to or from work or go somewhere where the employee would not normally go. This is particularly so when the instructions only require a minor diversion from what is essentially a normal journey to work.

In one case, an employee was asked to stop on his way to work and have snow tires put on his employer's car that he was driving. His claim was denied because he was injured close to his home and at the beginning of a normal journey to his office. He still had a fair distance to travel before he would divert from this route to work to carry out his employer's instructions. The place where the snow tires were to be fitted was close to his office and the fact that he had to go there did not appear to have significantly affected the initial part of his journey. Though road conditions were bad and thus provided some risk, this risk was one that he would, in any event, have to meet in travelling to work. He had to leave earlier to enable him to carry out his employer's instructions, but this reduced rather than increased the risks of the journey.

Where a worker is covered while travelling to a place of work, that worker must proceed with reasonable expedition and without substantial deviation from the most convenient route. Otherwise the worker may be regarded as no longer in the course of employment.

## #18.40 Travelling Employees

Employees whose job involves travelling on a particular occasion or generally are covered while travelling. Where they do not travel to their employer's premises before beginning the travelling required by their work, they are covered from the moment they leave their residence. However, they will not be covered if they first travel to their employer's premises even though their vehicle has been provided by their employer and/or they need that vehicle to do the travelling required by their work.

## #18.41 Personal Activities During Business Trips

The basic principle followed by the Board is set out in Larson's *Workmen's Compensation Law* as follows:

"Employees whose work entails travel away from the employer's premises are held . . . to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown." (5)

This principle covers the activities of travelling, eating in restaurants, and staying in hotels overnight where these are required by a person's employment.

What is meant by the reference to a "distinct departure on a personal errand"? It clearly does not simply refer to such everyday activities as eating, sleeping or washing which, in the case of most non-travelling employees would be regarded as personal activities outside the scope of the employment when performed outside normal work hours. Such activities will normally be regarded as within the scope of the employment of an employee who is required to travel. On the other hand, if, for example, a person on a business trip attends a theatre or spends the evening in a public house, these would probably not be regarded as activities in the course of employment.

The test to be applied is set out in policy item #21.00.

Normal activities such as eating, sleeping and washing can be regarded as personal activities which are incidental to the stay in the hotel required as a result of the employment. Where a worker goes out for a purely social evening, the worker may be staying in a hotel as a result of employment, but this employment feature of the situation may be clearly outweighed by the personal nature of the social activity.

In a Board decision, the deceased worker was an independent truck operator. Having delivered his loads earlier in the day, he went to a hotel for a social evening, drinking beer with friends from 7:00 p.m. until approximately 1:00 a.m. At that time, he left the hotel. While driving the truck from there to the place

where he usually parked it for the night, he was unfortunately killed. If the deceased had simply stopped for a short refreshment break after completing his deliveries and before returning home with his truck, the Board might well have concluded that he was still in the course of employment. But here the deceased had long since finished his employment functions of the day. The social evening was not a brief and incidental diversion. This was not a small feature of private life featuring in a sequence of employment activity. Rather, this was a case where an incident of the employment (i.e. the truck) featured incidentally in the social activity and private life of the deceased. The death was, therefore, not one arising out of and in the course of employment.

An injury may arise in the course of an employment activity but will not be compensable unless it also arises out of the employment. In the case of a worker who has to stay in a hotel on a business trip, this means that the injury must be caused by some hazard of the environment into which the worker has been put by the employment. In particular, this includes hazards of the hotel premises itself. Thus, for example, an injury will be compensable if it arises from the collapse of all or part of the hotel building or the burning down of that building. Another example would be where a worker is required to stay in a hotel as part of the employment. Although engaged in a personal activity; leaving the bathroom, at the time of the injury, it is regarded as merely incidental to the requirement that the worker stay overnight in the hotel. The injury resulted from tripping over a sill, a fairly obvious hazard of the hotel premises. The injury, therefore, is considered to have arisen both in the course of and out of the worker's employment. It follows that injuries resulting from some hazard introduced to the premises by the worker for personal benefit will not be considered to have arisen out of the employment.

In another decision, a sales supervisor sustained a back injury while lifting a spare tire into the trunk of his car on Saturday, while preparing for a business trip to commence on Monday. If the worker had been lifting display materials into the trunk of his car or had been involved in cleanup or repairs in which he would not normally have been involved, then there may be little doubt that an injury received under such circumstances would be compensable. The worker's evidence at the board of review hearing, however, indicated that employees were responsible for all maintenance on their cars. The question then is whether the standard of upkeep was any more than that which a person would normally do. In this case, it appears that the repairs effected and the subsequent cleanup were normal duties carried out by car owners. There is little on the facts to suggest that these actions were connected with the employment relationship as opposed to being undertaken in the worker's capacity as a car owner. The claim was therefore disallowed.

## **#18.42**      *Trips Having Business and Non-Business Purpose*

Whatever other requirements there may be for accepting a claim for an injury occurring on a trip made for business and non-business purposes, one essential is that the injury occur at a time when the worker is or is substantially on the route which leads to the place where the business purpose is to be carried out. No compensation is payable where the injury occurs while the worker is making a significant deviation from that route for non-business purposes.

## **#19.00**      **USE OF FACILITIES PROVIDED BY THE EMPLOYER**

Where a worker is injured in the course of using some facility supplied or provision made by the employer, the use of such facility or provision may be part of the employment relationship; and injuries resulting therefrom may be injuries arising out of and in the course of employment.

This rule is considered in relation to the situations set out below.

### **#19.10**      **Bunkhouses**

The use of residential premises by a worker is considered as part of the employment where the worker is required to use those premises by the employer, where there is no reasonable alternative accommodation, or their use is encouraged or contemplated by the employer. However, where an employer is simply providing accommodation for the employer's workers as an additional service, and the availability of suitable alternative accommodation gives the worker a reasonable choice between that provided by the employer and that provided by others, the worker's use of the employer's accommodation is not within the scope of the employment.

Where a camp is isolated or for other reasons the worker has no reasonable choice about staying in accommodation provided by the employer, injuries resulting from the use of facilities provided by the employer on the camp site will normally be held to have arisen out of and in the course of the employment. This applies not only to residential but to recreational facilities. This principle is illustrated by the facts of a Board decision where a claim was allowed from a man working for a mining company in a remote area of British Columbia and living in a bunkhouse provided by the company at a townsite approximately half a mile from the mine. Some time after the end of his shift the worker was going for a recreational walk, and was injured in a fall while descending the steps of the bunkhouse.

On the other hand, another claim where the worker was injured when he slipped on the ice while leaving his apartment in the town of Kitsault was denied. The townsite was owned and created by a mining company to accommodate its

employees, but a little less than half the population were employees. The town provided a variety of residential, social and recreational facilities. The apartment in question was owned by the company and rented to the worker at a rent slightly below market value. It was argued that the whole townsite was one large bunkhouse, but this was rejected. While the town was remote, this was not in itself sufficient. The rules extending coverage to bunkhouses did not apply to the situation where a company initiated and owned operation had evolved into a self-contained, viable community differing in its social structure from a normal town or village only by virtue of the fact that the principle employer is the sole property owner. There was no isolation from a normal personal and social life suffered by workers living in the town.

In another decision, the worker resided in a bunkhouse on a camp complex of his employer located close to Kelsey Bay. There were recreational facilities and living accommodation available to the worker in Kelsey Bay and most of his fellow workers took advantage of them. The worker was injured when he fell down the steps of a building on his employer's camp complex which was being used for holding a film show. The claim was denied and distinguished from the first example on the basis of the remoteness of the work site in that decision.

Even where the bunkhouse is not isolated and there is other available accommodation, there may be coverage where the bunkhouse accommodation is provided free of charge and the worker would have to pay for other accommodation. In practice, most persons would stay in the bunkhouse in such a situation and only those who had existing homes nearby would likely exercise the option to live elsewhere. The freedom of choice would be more theoretical than real and this may be a factor which indicates that coverage should extend to residing in the bunkhouse. On the other hand, while in the case of an isolated camp, coverage may extend to injuries arising from both residential and recreational facilities, the same will not necessarily be the case when the bunkhouse is located close to the town and alternative facilities. Economic factors may make a worker's freedom to choose the worker's own residence largely theoretical, but this does not extend to the choice of recreation. In the Kelsey Bay case described above, the claim was for an injury occurring in the course of a recreational activity.

An injury occurring on the premises of the employer will not be compensable if it results from the introduction to the premises of a hazard by the worker, for example, where the worker accidentally shoots himself or herself with the worker's own shotgun. (6)

## **#19.20      Parking Lots**

For the purpose of determining whether an injury occurring in a parking lot is compensable, the Board looks at five basic questions.

First, was the lot provided by the employer for the worker? The unauthorized use of a parking space by a worker would normally exclude the acceptance of a claim on the basis that the injury was not work related. There will, however, be exceptions where the employer, while not authorizing the parking, has condoned the practice by default in failing to take action to prohibit the practice.

Second, was the lot controlled by the employer? (The fact that a lot is owned or leased by an employer does not, in itself, automatically imply that it is controlled by the employer.) Claims are received for injuries occurring in parking lots not owned by the employer, but as a result of some arrangement, the worker is permitted to park there. If the lot is controlled by the employer, a claim may be acceptable. In claims involving shopping centre or shopping mall parking lots which are designed primarily for customer use and not controlled by the individual employer of a worker, an injury occurring on such premises would not normally be considered as acceptable.

Third, was the injury caused by a hazard of the premises? This is intended to limit acceptance to only those injuries which have a connotation of "employment relationship". For example, a slip on a pool of oil or a trip over an obstruction would qualify. On the other hand, workers who nip their fingers in their own car doors would not have their claims accepted. (7) There will also be claims which are not a direct result of the premises which may qualify, such as a pedestrian struck by a fellow employee's car. The term "hazard of the premises" is not an absolute requirement for compensation coverage. Rather it illustrates the distinction between injuries resulting from personal causes and those resulting from the employment. In effect, the type of injury that would qualify for acceptance if it occurred on a factory floor would also qualify for acceptance if it occurred in a parking lot.

Fourth, was the parking lot contiguous to the place of employment? The word "contiguous" is defined as meaning both adjacent to and attached to. While desirable, it should not be deemed a mandatory prerequisite for acceptance. Non-contiguous lots, particularly those under the direction, supervision or control of an employer do qualify although coverage does not normally extend to workers while they are making their way to them across and along public thoroughfares.

Finally, did the injury occur proximal to the start or stop of the shift? If there is a significant time gap between the time of an accident and the start or stop of the shift, the matter is investigated to determine whether there is an employment relationship.

## **#19.30 Lunchrooms**

Claims for injuries occurring in lunchrooms are acceptable if the lunchroom is provided by the employer. Again coverage is limited to reasonable use of the premises and would not extend to injuries sustained through eating food, unless this had been provided by the employer, and the employees had been specifically required to eat food provided by the employer, or it was provided as part of the worker remuneration.

People who have to travel in the course of their employment are covered during normal meal breaks. But a non-travelling employee who chooses to have a coffee break in a coffee shop across the street from the employment, rather than use the company facilities, would not be covered. (8)

## **#19.31 *Injury Results from Worker's Personal Property***

An injury which arises in the course of the employment will not be compensable if it arises out of exposure to a hazard or risk which is not related to the worker's employment. If a worker is injured through exposure to a hazard which the worker, as a personal matter, introduced into the workplace, that injury is not considered to have arisen out of the worker's employment. This principle was applied in a Board decision where the worker fell backwards off a bench on which he was sitting eating his lunch. As a result of the fall, a paring knife which he had brought from home for the purpose of eating his lunch, stuck into his thigh. The claim was denied because the worker had introduced an exceptional hazard onto the premises of the employer for his own personal use. The injury suffered would have been very minor or non-existent if the paring knife brought to work by the worker had not been lying on his lap at the time of the injury.

It is not essential that the personal property that causes the injury be intrinsically hazardous. It is sufficient that it causes the injury in the particular case. In general, injuries are not compensable where they result entirely from personal property brought onto the employer's premises by workers for their own purposes and have no connection with their employment.

## **#19.40 Medical Facilities**

The provision of medical or first aid facilities by an employer may be a factor indicating that an injury resulting from their use arose out of and in the course of employment.

## #19.41 *Adverse Reactions to Inoculations or Injections*

The following principles apply in claims arising from an adverse reaction to injections or inoculations:

1. Where the injection or inoculation is received voluntarily by the worker, either as part of a broad program put on by the employer or in any other circumstances, a claim should not be accepted.
2. Where the inoculation or injection is required, either as a condition of employment or as a condition of continued employment (such as where the worker has suffered an injury or contracted a disease outside the work environment, but the employer insists on precautionary measures being taken before the worker returns to employment), the claim should be allowed.
3. Although each claim has to be decided on its merits, generally a subjective test should be applied to determine whether or not the worker was “compelled” to take the treatment. For example, in one claim submitted for consideration, the following factors were taken into account:
  - (a) the employer had established a program whereby tetanus shots were given when metal cuts occurred;
  - (b) although the first shot was with consent, the notice for the booster shot left the impression that it was required. In other words, no choice was specifically given. The worker was merely advised he was to attend at a specific time and place to receive the shot;
  - (c) since no worker had ever refused a booster shot, there was further group or peer pressure and it was unlikely that a worker would feel free to refuse;
  - (d) that unlikeliness was increased by the worker’s language difficulties.

In general then, if the evidence is clear that the worker was personally convinced that it was necessary to take the shot in spite of objective evidence from the employer that the process was not compulsory, the claim should be accepted.

## **#20.00 EXTRA-EMPLOYMENT ACTIVITIES**

Generally speaking, activities which people undertake outside of their employment are for their own benefit and injuries occurring in the course of them are not compensable. There are, however, some activities which because of their relevance to the worker's employment may be accepted as being part of that employment.

### **#20.10 Participation in Competitions**

Subject to the general rules relating to compensation coverage, an injury sustained by a worker while participating in a first aid competition, mine rescue competition, or fire-fighting competition, or while travelling to or from such an event, will be considered one arising out of and in the course of employment if the following conditions are satisfied.

1. The type of skill or knowledge that the competition is designed to test or promote must be a type of skill or knowledge of service to the worker in her or his employment. For example, if it is a first aid competition, the worker must be one who functions as a first aid attendant in her or his employment, or be a trainee for such a function. It is not necessary, however, that the worker should function in this capacity regularly or on a full-time basis. It is sufficient if the worker functions in the capacity on a standby basis while having another regular job function.
2. The worker must be a participant in the event, not merely a spectator. The worker will be considered a participant if either:
  - (a) the worker is a participating or reserve member of a competing team, or;
  - (b) the worker is a coach or trainer, or;
  - (c) the worker is appointed or assigned to assist in the organization or administration of the event, or;
  - (d) the worker has job responsibilities relating to first aid, mine rescue, or fire-fighting similar to those of the competitors, or is training for such responsibilities, and is attending to improve her or his skill or knowledge relating to those responsibilities.
3. The participation of the worker in the event must be sponsored or requested in some way by his or her employer. If the employer has not specifically requested the worker to attend, a request may be

implied from the circumstances. For example, a request for the worker to attend may be implied if:

- (a) the worker is paid for the whole or any part of the period of her or his participation, or;
- (b) the worker is paid for the whole or any part of the time spent in training for the event, or;
- (c) the employer makes some contribution towards the expenses of the worker for attending the event, or;
- (d) the employer provides supplies or equipment for the worker's participation or her or his training for the event.

## **#20.20 Recreational, Exercise or Sports Activities**

The organization of, or participation in, recreational, exercise or sports activities or physical exercises is not normally considered to be part of a worker's employment under the *Act*. There are, however, exceptional cases when such activities may be covered. The obvious one is where the main job for which a worker is hired is to organize and participate in recreational activities. There may also be cases where, although the organization or participation in such activities is not the main function of the job, the circumstances are such that a particular activity can be said to be part of a worker's employment.

In assessing these cases, the general factors listed under policy item #14.00, *Arising Out Of and In The Course of Employment* are considered. Policy item #14.00 is the principal policy that provides guidance in deciding whether or not an injury arose out of and in the course of employment.

In considering specific cases relating to recreational, exercise or sports activities, the following factors are also among those considered in determining whether an injury is compensable. All relevant factors must be considered and no single factor is determinative. Relevant factors not listed in policy may also be considered.

### **1. Activities Part of Job**

Were the activities part of the job? If so, this is a factor that favours coverage. For example, a ski instructor injured while engaging in personal skiing activities unrelated to the instruction of pupils would not be covered. However, coverage may be provided if the skiing activity involved the instructor's pupils and was deemed part of the teaching activities.

## 2. Instructions from the Employer

Was the worker instructed or otherwise directed by the employer to carry out the exercise activity or to participate in the sports, exercise or recreational activity? For example, did the employer direct, request or demand that the worker participate in an activity as part of the employment? The clearer the direction, the more likely this will favour coverage.

Was participation purely voluntary on the part of the worker? In some instances the employer may simply sanction participation without directing or requesting participation. If so, this is a factor that does not favour coverage.

## 3. During Working Hours

Did the recreational, exercise or sports activity occur during normal working hours? If so, this is a factor that favours coverage.

Where recreational, exercise or sports activities occur outside of normal working hours, including paid lunch breaks, this does not favour coverage. However, this factor does not automatically preclude coverage. For example, coverage may be extended where a teacher is injured while coaching or supervising a student soccer game in the schoolyard during his or her lunch break or after school.

Coverage under the *Act* cannot be extended by an employer simply by labelling an off duty recreational, exercise or sport activity as mandatory.

## 4. Receipt of Payment or Other Consideration from the Employer

Was the worker paid full salary or other consideration while participating in the activity? The payment of salary favours coverage. The fact that salary or other consideration was not paid does not favour coverage.

## 5. Activity Supervised

Was the activity supervised by a representative of the employer having supervisory authority? This favours coverage. The fact that the activity was not supervised does not favour coverage.

## 6. Fitness a Job Requirement

Was physical fitness a requirement of the job? This factor is concerned with whether fitness is required in order to perform the job ( e.g., muscle strength or aerobic capacity). If physical fitness is a requirement of the job, this is a factor favouring coverage.

Fitness training or exercise is more likely to be viewed as a job requirement where a significant degree of aerobic capacity or strength is needed to perform the job properly, but the work itself does not provide sufficient conditioning. This may be the case, for instance, for certain professionals such as police or firefighters, who may require the ability to react quickly to sudden and strenuous emergencies.

It is recognized that any recreation or exercise activity which adds to a worker's general health and enjoyment of life may be said to assist them in their work and, therefore, to benefit their employer. However, to cover these activities under the *Act* for that reason alone would obviously be to expand its horizons far beyond what the *Act* intended.

#### 7. Public Relations for Benefit of Employer

Was there an intention to foster good relations with the public, or a section of the public with which the worker deals? A worker may have been injured while engaged in a recreational, exercise or sport activity, on behalf of the employer, involving the public, or a section of the public, which was clearly designed to foster good community relations. If so, this is a factor favouring coverage.

#### 8. On Employer's Premises

Did the activity take place on the employer's premises? This is a factor favouring coverage.

Coverage is normally not extended to recreational, exercise or sports activities occurring off the employer's premises. However, coverage is not automatically precluded respecting such injuries. Rather, a weighing of all relevant factors is required. For example, coverage may be extended where a teacher is injured while supervising students during an off-site sports day during regular school hours organized by the employer.

After a decision-maker has considered the factors listed in policy items #14.00 and #20.20, he or she must weigh the evidence to determine whether the injury arose out of and in the course of employment. The standard of proof applied is based on a balance of probabilities and consideration is also given to section 99 of the *Act*.

**EFFECTIVE DATE:** June 1, 2004  
**APPLICATION:** All injuries on or after June 1, 2004

## **#20.30 Educational or Training Courses**

A distinction must be drawn between things workers must do to become and continue to be qualified to perform a particular job and the things they must do as part of the job. Generally speaking, only the latter activities are covered. A person may, for example, need to spend some time in an educational or training institute to obtain or maintain the qualifications necessary for a particular job, but that person is not normally covered while attending that institution.

Compensation coverage does not extend to injuries occurring in the course of first aid courses being taken off the employer's premises and outside work hours. This is so, even though the worker receives additional pay for a first aid ticket and is reimbursed the course fees by the employer.

Injuries in the course of training programs undertaken under the auspices of the Board following a compensable injury are dealt with in policy item C11-88.50.

## **#20.40 Provision of Clothing and Equipment Required for Job**

The fact that a worker is required to provide tools for the job does not mean that carrying the tools to work or away from work becomes part of the employment. A worker may have to satisfy many prerequisites before obtaining a job, for example, education, experience, physical condition, clothing, equipment, or travelling to the work site. After the completion of a job, a worker may have to carry out various activities of a consequential nature, for example, cleaning clothes, removing equipment or travelling from the work site. None of these activities are normally covered as part of a worker's employment under the *Act*. Nor does the mere fact that the employer pays certain expenses associated with these activities result in coverage.

In one case, a worker was injured while lifting his tools from out of his car at the end of his journey from work. He had received travel time and expenses for that journey. The claim was denied. The fact that the worker was covered while travelling because of the receipt of travel time and expenses did not mean that he was also covered while removing tools at the end of the journey. The wages were paid for travelling, not for carrying tools. Coverage on the basis of the travelling allowance ended when he parked the car outside his home.

Changing clothes prior to starting or after finishing work is not normally part of the employment, whether it takes place at home, on the employer's premises or elsewhere.

## **#20.41**      *Injuries Resulting from Workers Clothing or Footwear*

Injuries resulting from the wearing of clothing or footwear are adjudicated according to the following principles:

1.      The clothing in question must be necessary for the job.
2.      As in all other cases, the injury must arise out of and in the course of employment. Therefore, if there is nothing in the employment activity which would reasonably cause an injury and that injury can be seen to be directly related to the ill-fitting nature of the clothes, the claim should be disallowed. However, even though the clothing may be ill-fitting, if the job involves certain activity which might in the ordinary course of events and with proper clothing cause the injury, the claim should be allowed.
3.      Who purchased the clothing or item in question is irrelevant.

## **#20.50**      **Fund Raising, Charitable or Other Similar Activities**

Situations occasionally arise when a person is injured while participating in fund raising, charitable or other similar activities; for example, a charity collection activity off the employer's premises, either during or outside of working hours.

The organization of, or participation in, fundraising or charitable activities is normally not considered to be part of a worker's employment under the *Act*. There are, however, certain cases when such activities may be covered.

Policy item #14.00, *Arising Out of and In The Course of Employment*, is the principal policy that provides guidance in deciding whether or not an injury arose out of and in the course of employment. The factors listed under policy item #14.00 are therefore considered in determining whether coverage should be provided for an injury sustained during a fundraising or charitable activity.

A weighing of all relevant factors is required. For example, coverage may be extended where a fundraising activity occurs during normal working hours on the employer's premises, at the direction of the employer for a purpose related to the employer's business.

The above guidance does not apply to persons who are employees of charitable or other like agencies which are covered under the *Act*, or to persons from other companies who are seconded for a period of time to work with such agencies and who are considered workers of those agencies under the *Act*.

**EFFECTIVE DATE:** June 1, 2004  
**APPLICATION:** All injuries on or after June 1, 2004

## **#21.00 PERSONAL ACTS**

There is a dilemma that is always inherent in workers' compensation. The difficulty, of course, is that the activities of workers are not neatly divisible into two clear categories, their employment functions and their personal lives. There is a broad area of intersection and overlap between work and personal affairs, and somewhere in that broad area the perimeter of workers' compensation must be mapped. An incidental intrusion of personal activity into the process of work will not require a claim, otherwise valid, to be denied. For example, it has long been accepted that compensation is not limited to injuries occurring in course of production. Where persons are injured while at work in the broader sense of that term, claims will not be denied on the ground that at the precise moment of injury they were blowing their noses, using the toilets or having their coffee break. Similarly it has long been accepted that when a truck driver stops for a meal in the course of a long journey and is injured while crossing the road the driver is just as much entitled to compensation as a factory worker injured on the way to the works canteen. Conversely, the intrusion of some aspect of work into the personal life of an employee at the moment an injury is suffered will not entitle the employee to compensation. For example, if someone slips in the living room at home and is injured, that person is not entitled to compensation simply on the ground that at the crucial moment the person was reading a book related to work. In the marginal cases, it is impossible to do better than weigh the employment features of the situation in balance with the personal features and reach a conclusion (which can never be devoid of intuitive judgment) about which should be treated as predominant.

Where the common practice of an employer or an industry permits some latitude to employees to attend to matters of personal comfort or convenience in the course of employment, compensation for injuries occurring at those moments is not denied simply on the ground that the employee is not at the crucial moment in the course of production. This is within the scope of the established doctrine relating to acts which, though not in themselves productive, are nevertheless a normal incident of employment.

### **#21.10 Lunch, Coffee and Other Breaks**

A worker is considered to be acting in the course of employment not only when doing the work the worker is employed to do but also while engaged in other incidental activities. For example, a worker does not cease to be in the course of employment while having a lunch or coffee break on the employer's premises, while going to the toilet, having a smoke or other such activities. Therefore, if while engaged in such activities the worker is injured by virtue of some aspect of the work environment, a claim will be accepted. On the other hand, not all

injuries occurring while engaged in such activities will be compensable. The injury must “arise out of” the employment as well as “in the course of” it. Thus, for example, if a worker has a heart attack while having a smoke during working hours a claim will likely be denied. This is because the heart attack probably arose from natural causes and was not caused by any aspect of the employment rather than because, in having a smoke, the worker was no longer in the course of employment.

In one case the worker, during a paid coffee break, went out from her place of work to her employer’s parking lot with the intention of moving her car closer to the mill entrance. However, before she could do this, she trapped her finger in the car door while shutting it. The purpose of moving the car was to allow her to leave work more quickly and easily at the end of the day. She did not cease to be in the course of her employment when she walked out to the parking lot. It was not unreasonable for her to go out to her car during her coffee break. The evidence established that there was a common practice for employees to do this which was acquiesced in by the employer. If, for example, she had tripped over a pot hole in the lot, any resulting injury would have been compensable. It would have arisen out of the employment, as well as in the course of the employment, as it was caused by a hazard of the employer’s premises. It was considered that, in trapping her finger in her car door, she had not suffered an injury which arose out of her employment. The car was her personal property which she had brought onto the employer’s premises for her own convenience. It was a hazard arising from the use of this property which caused her injury.

This case should be contrasted with another claim where the worker during a break in production, ran out to his car in the parking lot to get a package of cigarettes and twisted his ankle. His claim was denied. A person is considered to be in the course of his employment while entering and leaving his employer’s premises at the start and end of his shift and at other recognized coffee or lunch breaks. This may also extend to other times when a worker has to leave his employer’s premises for good reason, for example, in emergencies. However, not all trips to and from the worker’s place of work can be treated in this way. There will be trips for personal reasons unrelated to the work and which cannot be said to be simply incidental to that work. There is no coverage in such cases. The trip made in this case was of that kind.

It was considered that more was involved here than such activities as blowing a nose, smoking a cigarette, or going to the toilet, which would normally be accepted as incidental to the employment. The rationale for accepting such activities is that they benefit the employer by making his employees comfortable while they are working and, therefore, in the long run, more efficient. It can, of course, be argued that the worker’s going to get his cigarettes benefited his employer by putting him in a position where he would be able to smoke and make himself comfortable. However, it seemed that this doctrine should be limited to the specific activities which make the worker more comfortable and not

to other secondary activities which put him in the position of doing these activities.

## **#21.20 Vacations**

Generally speaking a person who works during a vacation from normal employment is acting in a personal capacity and unless personal optional protection has been purchased from the Board, or the worker is working in another employment covered by the *Act*, there will be no coverage for workers' compensation purposes. In some few cases, there may be evidence showing that, although the employee is on vacation, the employee is in fact working for the usual employer. However, this cannot be simply assumed because the employee is doing work of a type normally done and for someone who is also a customer of the employer.

In a Board decision, the worker repaired a recreational vehicle which was owned by him and a partner and such repairs took place while the worker was on holidays. The worker and his partner, operating under the firm name of "X", also leased the vehicle to the general public on occasion, and had a contractual arrangement for maintenance of, and repairs to, the vehicle with "Y", a firm of which the worker and his wife were principals. The worker contended that the repairs were performed in his business and not his personal capacity, but the claim was denied. Apart from the worker's own testimony, there were no objective facts to indicate that he was acting in the course of his employment at the time of injury. The mere fact that the worker was the principal of "Y" and that "Y" subsequently submitted an invoice for the work to "X" was insufficient.

## **#21.30 Payment of Wages or Salary**

Where a worker is injured in the course of receiving the consideration for the employment, the acceptance of such consideration is part of the employment relationship, and injuries resulting therefrom are injuries arising out of and in the course of employment.

This clearly covers a worker injured while drawing wages in cash at the pay office of an industrial plant. However, it may also apply where an employee is paid by cheque and is injured in the course of converting that cheque into a usable form, either by cashing it or by depositing it in the employee's own bank account. If the cashing or depositing of the cheque occurs in circumstances which, in some other respect, have a significant employment connection, compensation will normally be paid.

In a Board decision, a truck driver was driving his employer's truck back to the yard at the end of his shift when he decided to call in at the bank on his way and cash his pay cheque. While crossing the road to return to his truck after cashing

the cheque the worker was hit by a passing vehicle. It was decided that in so far as the worker may have undertaken a diversion to attend to a matter of personal concern, this was so trivial compared with the continuing employment features of the situation that it would be wrong to treat the personal aspect as controlling.

## **#21.40 Acts for Personal Benefit of Principals of Business**

In the case of independent operators with personal optional protection and active principals of small companies, it is necessary to distinguish between the activities of the worker carried on in furtherance of the business for which he or she or the company is covered by the *Act* and independent, personal or business activities which are not so covered. Only injuries occurring while pursuing the former type of activity are covered by the *Act*. For example, in one claim, the principal of a small plumbing and heating company was injured while fogging mosquitoes on property belonging to himself and to other members of a property owners association. Although the worker's company supplied the materials used, there was no evidence that the fogging was done as part of the business of that company. Rather, the evidence indicated that it was an independent personal enterprise carried on by the worker on behalf of himself and the association. The facts of the case set out in policy item #21.20 also illustrate the same principle.

On the other hand, in another Board decision, the worker was employed by an auto body shop, a limited company of which Mr. "X" was President and part owner. After making a delivery to a customer with Mr. "X", the worker was requested to assist Mr. "X" to pick up a bed and deliver it to his mother. The worker injured his back while moving the bed. This took place within normal working hours. The claim was disallowed by the Adjudicator because moving the bed was not related to the employer's business as a body shop owner. This argument had merit vis-a-vis the fact that the worker's legal employer was a limited company. However, the board of review felt that for practical purposes Mr. "X" was the employer. Moving the bed was for the benefit of Mr. "X", and at the same time Mr. "X" asked the worker to assist him in moving the bed, he was being paid by him and was acting under his directions.

## **#22.00      COMPENSABLE CONSEQUENCES OF WORK INJURIES**

Once it is established that an injury arose out of and in the course of employment, the question arises as to what consequences of that injury are compensable. The minimum requirement before one event can be considered as the consequence of another is that it would not have happened but for the other.

Not all consequences of work injuries are compensable. A claim will not be reopened merely because a later injury would not have occurred but for the original injury. Looking at the matter broadly and from a “common sense” point of view, it should be considered whether the work injury was a significant cause of the later injury. If the work injury was a significant cause of the further injury, then the further injury is sufficiently connected to the work injury so that it forms an inseparable part of the work injury. The further injury is therefore considered to arise out of and in the course of employment and is compensable.

**EFFECTIVE DATE:**            February 1, 2004  
**APPLICATION:**            All decisions, including appellate decisions, made on or after February 1, 2004 regardless of the date of the original work injury or the further injury.

### **#22.10      Further Injury or Increased Disablement Resulting from Treatment**

Where a further injury or increased disablement arises as a direct consequence of treatment for a compensable injury, it is sufficiently connected to the original work injury as to form part of that injury. The further injury is therefore considered to arise out of and in the course of employment and is compensable.

Where a worker is undergoing treatment for a compensable injury, the place of treatment is analogous to a place of employment. A further injury arising out of the place of treatment is compensable provided it is consistent with the worker being at the place of treatment for the purpose of treatment and does not result from activities of a personal nature. The further injury in these cases is compensable because it is sufficiently connected to the original work injury so that it forms part of that injury and is therefore considered to arise out of and in the course of employment. For example, if a worker is undergoing treatment at a hospital for a compensable injury and sustains a further injury by stumbling down the stairs in the hospital while en route to a treatment appointment, the further injury is also compensable.

**EFFECTIVE DATE:** February 1, 2004  
**APPLICATION:** All decisions, including appellate decisions, made on or after February 1, 2004 regardless of the date of the original work injury or the further injury.

## **#22.11**      *Disablement Caused by Unauthorized Surgery*

Compensation is not limited to the direct consequences of work accidents. Ordinarily, when a worker undertakes surgery for a work injury, the consequences of the surgery are considered to be sufficiently connected to the original work injury as to form part of that injury. Any disablement resulting from the surgery is treated as compensable on the basis that it arose out of and in the course of employment.

An exception could be made if a worker recklessly undertook surgery, knowing that it was likely to do more harm than good. In that case, a worker might be viewed as having introduced a new cause of disablement so that the further injury is not sufficiently connected to the original work injury so as to form part of that injury. There may be other grounds for making an exception. However, the connection between the original work injury and the further injury is not severed simply because the surgery was not authorized by the Board.

Virtually all patients place complete faith in their physicians and, if a physician merely suggests the remote possibility of improvement in a patient's condition through surgery, it cannot be said to be "clearly unreasonable" for the patient to go along with that suggestion. It is irrelevant whether unauthorized surgery was successful or unsuccessful, whether or not the worker and/or the physician knew the Board was not prepared to authorize the surgery, nor that the surgery was purely exploratory in nature.

The only situation where it is foreseeable that the Board could reasonably refuse payment of benefits for unauthorized surgery is where a worker, in desperation and against the advice of every other physician consulted, deliberately seeks out surgery. In such a situation, the connection between the original work injury and the further injury is considered to be severed. However, unless the worker can be shown to have acted foolishly, the worker should not be deprived of compensation because there happens to be a persuasive surgeon involved who has convinced the worker that, on balance, surgery is the best course of action.  
(9)

The above rules only apply where the surgery resulted from the injury. The Board accepts no responsibility for the cost of surgery or any resulting disability where the surgery was not a consequence of the injury.

**EFFECTIVE DATE:** February 1, 2004  
**APPLICATION:** All decisions, including appellate decisions, made on or after February 1, 2004 regardless of the date of the original work injury or the further injury.

### **#22.12**      *Acceleration of Treatment*

The Board accepts responsibility for all the consequences of treatment where the need for it was accelerated by the injury, even where it would likely have been required at some point in the future in any event. The only exception is where the injury is superimposed on an already existing disability so that Proportionate Entitlement applies. (10)

### **#22.13**      *Activities at Home*

While the Board does pay compensation for injuries arising out of and in the course of medical treatment for a work injury, this does not extend to ordinary exercises performed at home long after the worker has recovered, or the condition has stabilized and the worker is in receipt of a permanent disability pension. Such exercises are usually for the purpose of preventing further problems rather than for treating an existing condition. Compensation is not payable in respect of preventive measures.

### **#22.14**      *Treatment Unrelated to Injury*

Where a worker has to undergo surgery, tests, or other treatment for a non-compensable condition or a non-compensable injury occurs prior to the worker's complete recovery from a compensable injury, and there is for that reason, a delay in recovery or an aggravation of the condition, there are two possible methods for the Claims Adjudicator to deal with the situation. The Adjudicator may, on the one hand, continue to pay wage-loss benefits after the occurrence of the non-compensable injury or treatment for a period which the Adjudicator estimates the worker would have taken to fully recover from the compensable injury if the non-compensable injury or treatment had not occurred. Alternatively, the Adjudicator might immediately terminate benefits on the occurrence of the non-compensable injury or treatment and recommence them when the worker's recovery is at the same stage as it was immediately before its occurrence. Either of these methods may be an appropriate way of dealing with the circumstances of a particular claim. However, in no situation could there be justification for applying both methods to the same claim at the same time, since this would, in effect, result in a double payment to the worker.

The above rule applies though the treatment is carried out at the same time as the treatment for the compensable condition and might not have been carried out at the time if the worker had not then sought treatment for the compensable condition.

If a compensable injury delays a worker's recovery from subsequent non-compensable surgery, wage-loss compensation may be paid for the period of the delay.

## **#22.15**      *Travelling To and From Treatment*

The test for determining whether a further injury is compensable is whether the work injury was a significant cause of the further injury. Where this test is met, there is a sufficient connection between the work injury and the further injury to consider the further injury a part of the work injury. In considering whether this test has been met, the place of treatment is analogous to a place of employment.

Travel to the place of treatment is generally comparable to the ordinary commute to work. Injuries arising in the course of normal travel for subsequent treatment are generally not compensable. For example, if a worker suffering from a compensable injury is subsequently injured in the course of travel in the following circumstances, it is not compensable:

- (a) attending the office of the attending physician for advice, examination or treatment;
- (b) attending for x-ray examinations or laboratory tests when associated with a visit to the office of the attending physician and not involving a special journey from home;
- (c) attending the office of a medical specialist in connection with a course of treatments by such a specialist;
- (d) attendances at the out-patient department of a hospital or a private physiotherapist for a course of therapy treatments;
- (e) travel to a drugstore for the purchase of drugs or other medical supplies;
- (f) travel to an optician or optometrist, prosthetist, shoemaker or hearing aid dealer in connection with medical supplies or the fulfillment of prescriptions.

The heading also includes any other types of visits or attendances which are part of a routine (analogous to travelling to and from work) or which are analogous to personal shopping.

Apart from routine travel in connection with subsequent treatment, a worker may sometimes be injured in the course of a special and exceptional journey undertaken as a result of the compensable injury. The following headings illustrate the point.

1. Emergency Transportation

Where a compensable injury has just occurred and a worker is being transported to a hospital or other place of emergency treatment, and a further injury occurs in the course of such transportation, the further injury is also compensable. This is so whether the worker is travelling on foot, by ambulance, by automobile, by aircraft, or by any kind of vehicle; and it is so regardless of the ownership of the vehicle, and regardless of whether the worker is driving the vehicle or being carried as a passenger.

2. Treatment-Related Vehicles

If a worker is travelling to or from a place of treatment for a compensable injury and sustains a further injury while travelling in a vehicle that is provided for that purpose by an institution engaged in the provision of treatment, or in the provision of a vehicle for the conveyance of patients for treatment, the injury is compensable.

3. Exceptional Travel for Subsequent Treatment

This heading relates to situations where a worker is travelling by prearranged appointment to a place of exceptional medical treatment, or for an exceptional examination. In these cases, an injury arising out of travel to or from that place of treatment is compensable. The following situations illustrate this point.

- (a) Travelling to a hospital for admittance as an inpatient, or travelling home following discharge from hospital as an inpatient.
- (b) Travelling to any other place of special treatment that involves living away from home for the duration of the treatment.
- (c) Travelling in relation to a referral by the attending physician to a specialist for a special examination or treatment.
- (d) Travelling for x-ray examination or laboratory tests where this involves a special journey separate from any attendance for routine treatment.
- (e) Travelling to a special place of paramedical attention, or a social or rehabilitation agency in connection with assistance

in the diagnosis, handling, treatment or care of medical or rehabilitation problems related to the compensable injury on referral by the attending physician, or by the Board.

- (f) Travelling on referral by a physician or qualified practitioner to another physician or qualified practitioner for a second opinion.
- (g) Travelling for a medical examination at the Board by prearranged appointment with the Board, or for a medical examination elsewhere approved by the Board in connection with a compensable injury.

In the examples in items 1-3 above, the further injury is compensable because it is sufficiently connected to the original work injury as to form part of that injury. The further injury is therefore considered to arise out of and in the course of employment.

**EFFECTIVE DATE:** February 1, 2004

**APPLICATION:** All decisions, including appellate decisions, made on or after February 1, 2004 regardless of the date of the original work injury or the further injury.

## **#22.20 Subsequent Injuries Occurring Otherwise than in the Course of Treatment**

Where a worker has a pre-existing non-compensable condition which is aggravated and rendered disabling by a work injury, the Board does not deny a claim for compensation just because the injury would have caused no significant problems if there had been no pre-existing condition. The Board accepts that it was the injury that rendered that condition disabling and pays compensation accordingly. The corollary of this is that, where a worker has a compensable condition which is rendered disabling by an aggravating incident occurring outside of work, the worker's claim for the compensable condition is not re-opened just because the incident would not have been significant if that condition had not existed. The Board recognizes rather that it was the non-work incident that produced the disability for which compensation is claimed. The only exception to this is where the compensable condition actually causes the fall or other incident which brought about the aggravation.

Where the subsequent injury occurs at a time when the worker is still recovering from a previous work injury, the principles set out in policy item #22.14 apply.

## **#22.21**      *Activities on Board Premises or at Other Premises under Board Sponsorship*

Where a worker is attending at the Board by prearranged appointment made with an officer of the Board for the purpose of an enquiry, interview or discussion in respect of a claim which has been accepted, or which is subsequently accepted, and where the worker suffers a further injury arising out of and in the course of travel to or from such an appointment, the further injury will be compensable.

The same rules apply where a worker is attending by prearranged appointment to meet with the Board's Review Division, the Workers' Compensation Appeal Tribunal or a Medical Review Panel.

Where an injured worker is reinjured while undergoing a course of rehabilitation training sponsored by the Board, the second injury may be regarded as a compensable consequence of the first injury. (11)

In all of these instances the place of treatment, appointment or rehabilitation is analogous to a place of employment. The further injury is compensable because it is sufficiently connected to the original injury as to form part of that injury and, therefore, is considered to arise out of and in the course of employment.

**EFFECTIVE DATE:**            February 1, 2004  
**APPLICATION:**            All decisions, including appellate decisions, made on or after February 1, 2004 regardless of the date of the original work injury or the further injury.

## **#22.22**      *Suicide*

In a case of suicide, death benefits are payable if it is established that the suicide resulted from a compensable injury.

In a Board decision, a claim was made by a widow that her husband had committed suicide because of a state of depression and despair resulting from a compensable injury occurring four years earlier. The claim was disallowed. It was possible that the accident might have had some significance. Any adverse experience might have had some significance. But the real test was: Was the suicide something which would have been unlikely to occur if there had been no work accident? On the facts, the suicide was something which might well have occurred in any event rather than something that would have been unlikely without the accident. Bearing in mind the deceased's history of mental disorder and the sparsity of other evidence of causal connections between the work injury and the suicide, it did not appear that the accident had a sufficient degree of causative significance to warrant the conclusion that the death resulted from the compensable injury.

### **#22.23**      *Criminal Proceedings*

As an example, the worker, a caretaker of an apartment building, became involved in a fight with a tenant and received injuries for which a compensation claim was accepted. The worker suffered psychological problems as a result of criminal proceedings taken by the Crown for assault and his employer's suspension of him from his employment pending the outcome of the proceedings. If the charges had not been laid and the worker had not been suspended, he would not have been disabled. While there was an undeniable link between the actions of the Crown and his employer with the compensable incident, it was too tenuous to make the disability which flows from these actions compensable. The reaction to the laying of charges did not arise out of and in the course of employment, but from the intervening decision of the Crown, a party extraneous to the employer/employee relationship, to proceed with criminal charges. The disability flowing from that decision was not compensable.

### **#22.30**      **Diseases or Other Conditions Resulting from Trauma**

Compensation coverage extends not just to the immediate physical damage caused by the injury, but to any separate diseases or conditions which arise directly from it.

### **#22.31**      *Multiple Sclerosis*

While the cause of multiple sclerosis is unknown, there has been much medical literature on factors which may precipitate the onset of the disease in an already predisposed person. One of these factors is a traumatic injury. There is a medical authority for the view that multiple sclerosis may be considered to have been precipitated by a traumatic injury if:

- (a) the symptoms and signs of the disease first appeared in the injured part of the body;
- (b) the symptoms and signs of the disease occurred shortly after the injury; and
- (c) there has been no preceding history of neurologic deficit.

### **#22.32**      *Cancer*

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

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

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

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

### **#22.33**      *Psychological Problems*

Psychological problems arising from a physical or psychological injury are acceptable as compensable consequences of the injury. However, there must be evidence that the 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 deterring 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.
- C. Where breakage of eyeglasses falling within Example B. follows immediately after an accident within the meaning of section 21(8), i.e. one arising out of and in the course of employment which injured or could with reasonable probability have injured the worker, the breakage may be considered to have resulted from this accident. For instance, a worker slips and falls, and the glasses fly off and are run over by a truck, or some harmful liquid splashes into the worker’s face and while washing his or her face, the worker places the glasses in a position where they are broken or the glasses are dropped while removed for cleaning. The breakage in these cases might be considered to have resulted from the fall and the splashing of the liquid. The question of whether the worker was at fault would have to be considered.

## **#23.50      Meaning of Corroboration in Section 21(8)**

In the case of eyeglasses, dentures, and hearing aids, where the breakage is not accompanied by objective signs of personal injury, the accident must be corroborated.

Corroboration is evidence other than that of the worker which renders more probable the truth of the worker's testimony on a material point. As the *Act* requires that the accident be corroborated, it is not sufficient for the corroborating evidence simply to confirm the existence of the broken glasses.

Corroboration means that there must be some evidence that is independent of the report or testimony of the worker. Thus, there is not normally corroboration where the only evidence is the statement of the worker, coupled with the evidence of another person who had no knowledge of the facts, but is simply able to report a similar statement of the worker made to the person at an earlier time.

For example, suppose a worker who had just had his or her glasses broken as a result of an accident arising out of and in the course of employment goes immediately to the employer, reports the accident and shows the employer the broken glasses. No matter how shortly after the accident this occurs, a few minutes for instance, the employer's evidence as to this report is corroboration as to the breakage of the glasses, not the accident from which it may have resulted. The employer's evidence as to the occurrence of the accident is not evidence independent of the report or testimony of the worker.

A possible exception to this rule was recognized in cases where the worker makes a spontaneous exclamation, or reports an event momentarily after its occurrence so that the immediacy of the report adds to its credibility. This exception was explained in a Board decision as a reference to what is known in the law of evidence as "res gestae", where the facts speak through the party. More particularly, this means declarations uttered by the worker simultaneously or almost simultaneously with the occurrence of the accident, so that the declaration forms part of the circumstances of the accident. For example, suppose a worker is hit in the face and the worker's glasses are damaged by a splinter. The worker utters an exclamation of surprise or shock at the moment of impact which indicates that the glasses have been damaged as a result of the accident. This is overheard by someone standing near who did not witness the accident. The repetition of that exclamation by the person who overheard it might amount to corroboration.

Normally corroboration consists of the evidence of witnesses to the accident. Where there are no such witnesses it will, in practice, be very difficult to provide corroboration of an accident's occurrence. It will therefore be very difficult for a person working alone to establish corroboration. However, it may be possible

that a lack of witnesses could, in an appropriate case, be remedied by other evidence. This evidence would have to be independent of the report or testimony of the worker and corroborate the occurrence of the accident as well as the breakage.

In one claim, for instance, the eyeglasses of a nurse in a mental hospital were broken while the nurse was trying to restrain a patient. There were no witnesses to the breakage, but some persons entered the room shortly after to see the glasses broken on the floor and the struggle between nurse and patient continuing. It was considered that the accident was sufficiently corroborated by the witnessing of the struggle. However, if those witnesses had entered after the struggle had ceased the question may be more doubtful. It would probably depend on whether the appearance of the nurse, the patient, and the room, without regard to the nurse's statement as to what happened, made it clear that the struggle had occurred and had resulted in the broken glasses. Obviously, corroboration would be more difficult, the longer after the event the witnesses entered the room.

The above policies and procedures regarding situations where no personal injury occurs also apply to claims administered under the *Government Employees Compensation Act*.

## **#23.60      Meaning of Fault in Section 21(8)**

Where breakage of eyeglasses, dentures, or hearing aids is not accompanied by objective signs of personal injury, not only must the accident causing the breakage be corroborated, but the Board must be satisfied that the worker was not "at fault".

The question of whether the worker was "at fault" arises whenever some negligent or careless act or omission of the worker has contributed to the breakage. However, not all such acts or omissions will result in the worker's being "at fault". In the normal situation, a worker's negligence or carelessness will combine with something in the employment to cause the breakage. Then the question becomes one of weighing the worker's careless act or omission against the employment causes of the damage. If, after weighing these factors, it is considered that the worker's negligence was the predominant cause of the breakage, the worker must be held to be at fault. If, although the worker's negligence contributed to the breakage, it is felt that the predominant cause was something in the employment, the worker is not to be considered at fault.

In weighing the worker's carelessness against any employment causes of the breakage of eyeglasses, it was considered that minor lapses of attention, which it is reasonable to expect from the average worker in the normal course of work, would not generally outweigh the employment aspects of the situation. Therefore, if, for example, a worker trips over or bumps into something in the

course of employment, the worker will not usually be held to be at fault because of carelessness in not looking where he or she was going. On the other hand, if, for example, the worker tripped or bumped into something as a result of horseplay or some other misconduct or unauthorized activity, or had previously been warned about this sort of conduct, such activity might be said to be the predominant cause of any breakage of eyeglasses.

Consider also the example given in policy item #23.40, Example C, of a worker whose glasses are damaged when dropped or taken off following an accident within the meaning of section 21(8). While the worker might be thought careless in dropping the glasses or placing them in an unsafe place, it was the accident which placed the worker in the situation where it was necessary to take them off, and this put them at risk of being broken as a result of carelessness. Assuming that the worker was not “at fault” in regard to the original accident, it would usually be unfair to regard the worker’s carelessness as the predominant cause of the breakage. This would be particularly so if the employment involved the worker in having wet or greasy hands or some other circumstance which would make the worker more prone to drop the glasses or give no opportunity to find a safe place to put them. There may, on the other hand, be cases where the worker’s carelessness clearly outweighs the effect of any employment accident.

## **#23.70 Compensation Payable under Section 21(8)**

When a claim satisfies the requirements of section 21(8), the worker is reimbursed the amount charged by the supplier or repairer of the appliance in question. The amount payable is not limited to what the Board would pay for a similar appliance required for a worker as the result of an injury covered by section 5(1) of the *Act*.

A worker is not entitled to wage-loss benefits under section 21(8) when there is a delay in replacing the broken or damaged appliance and the worker is unable to work without it. Nor is wage loss payable where the worker has to take off time from work in order to be fitted for new eyeglasses and to pick them up when ready.

## **#24.00 FEDERAL GOVERNMENT EMPLOYEES**

Section 4(1) of the *Government Employees Compensation Act* provides that “compensation shall be paid to . . . an employee who is caused personal injury by an accident arising out of and in the course of his employment . . . and . . . the dependants of an employee whose death results from such an accident.”

Section 4(4) applies a similar provision to railway employees of the Federal Government. The employees covered by these sections were discussed in policy item #8.10.

The employee or the dependants are, notwithstanding the nature or class of the employment, entitled to receive compensation at the same rate and under the same conditions as are provided under the law of the province where the employee is usually employed. (16)

Compensation entitlement is determined by “the same board, officers or authority as is or are established by the law of the province for determining compensation for workmen and dependants of deceased workmen” other than Federal employees. (17)

The phrase “by an accident” in Subsection 4(1) does not require that there be a clearly ascertainable incident or series of incidents which caused the injury. Injuries that arise gradually over time or “by process” are not excluded by this subsection. The injury itself can be the “accident” for the purpose of section 4. Thus, the test for Federal employees in B.C. under Subsection 4(1) is, in effect, the same as the test for other workers in B.C. under Subsection 5(1) of the B.C. Act. (18)

The *Government Employees Compensation Act* applies to an accident occurring or a disease contracted within or outside Canada. (19)

For the purposes of the *Government Employees Compensation Act*, the place where an employee is usually employed is the place where the employee is appointed or engaged to work.

Where an employee is usually employed in the Yukon Territory or the Northwest Territories, the employee is deemed to be usually employed in the Province of Alberta. (20)

Where an employee, other than a person locally engaged outside Canada, is usually employed outside Canada, the employee is deemed to be usually employed in the Province of Ontario. (21)

## NOTES

- (1) Appeal Division Decision No. 92-0743; policy item #24.00
- (2) See policy item #13.12
- (3) *Law of Workmen's Compensation*, A. Larson, 1972, Vol. I, para. 23.61
- (4) See policy item #2.23
- (5) Larson, para. 25.00
- (6) See policy item #19.31
- (7) See policy item #19.31
- (8) See policy item #21.10
- (9) See policy item #78.11
- (10) See policy item #44.00
- (11) See policy item #88.54 and policy item #115.30
- (12) Ewing, J. Modern attitude toward traumatic cancer. *Arch. Path.* 19:690-728, 1935
- (13) Pritchard et al. The Etiology of Osteosarcoma. *Clin. Orthoped. and Rel. Res.* 111:14-22, September 1975;  
Coley, W.B. *Neoplasms of Bone*. Paul Haber Inc., 2nd ed., 1960;  
Dahlin, David C. *Bone Tumours*. Charles C. Thomas, 3rd ed., 1978;  
Monkman et al. Trauma and Oncogenesis. *Mayo Cl. Proc.* 49:157-163, March 1974
- (14) ~~See Chapter 5~~ **DELETED**
- (15) S.21(8)
- (16) *Government Employees Compensation Act*, S.4(2)
- (17) *Government Employees Compensation Act*, S.4(3)
- (18) Appeal Division Decision No. 92-0743
- (19) *Government Employees Compensation Act*, S.3(2)
- (20) *Government Employees Compensation Act*, S.5
- (21) *Government Employees Compensation Act*, S.6



Campylobacteriosis (Diarrhea caused by Campylobacter)  
Carpal Tunnel Syndrome  
Chicken Pox  
Cubital Tunnel Syndrome  
Disablement from Vibrations  
Emphysema  
Epicondylitis (Lateral and Medial)  
Food Poisoning  
Giardia Lamblia Infestation  
Head Lice (Pediculosis Capitis)  
Heart Disease  
Herpes Simplex  
Hypothenar Hammer Syndrome  
Hepatitis A  
Legionellosis  
Lyme Disease  
Meningitis  
Mononucleosis  
Mumps  
Plantar Fasciitis  
Radial Tunnel Syndrome  
Red Measles (Rubeola)  
Ringworm  
Rubella  
Scabies  
Shigellosis  
Staphylococci Infections  
Stenosing Tenovaginitis (Trigger Finger)  
Streptococci Infections  
Tendinitis, Tenosynovitis (other than the forms of tendonitis and tenosynovitis mentioned in Item 13 of Schedule B of the Act)  
Thoracic Outlet Syndrome  
Toxoplasmosis  
Typhoid  
Vinyl Chloride Induced Raynaud's Phenomenon  
Whooping Cough  
Yersiniosis

It is important to distinguish between designation or recognition of an occupational disease under section 6(4.2) where a particular process, trade or occupation is specified or by regulation of general application, and the addition of a disease to Schedule B under section 6(4.1). Where the Board concludes that a disease is more likely to occur in connection with a particular employment covered by the Act than elsewhere, it may be added to Schedule B (see policy item #26.01). On the other hand, where the Board concludes that a disease is sometimes due to the nature of a particular employment covered by the Act, but it does not appear that the disease is more likely to occur in connection with that

employment than elsewhere (it is not something specific to that employment), the Board may designate or recognize the disease under section 6(4.2) where a particular process, trade or occupation is specified, or by regulation of general application without the rebuttable presumption afforded by inclusion in Schedule B.

Several of the above contagious diseases are not likely to be “. . . due to the nature of any employment in which the worker was employed . . .” except for hospital employees, or workers at other places of medical care.

The authority under the *Act* to designate or recognize a disease by regulation under sections 6(4.1) and 6(4.2) rests with the Board of Directors.

**EFFECTIVE DATE:** August 14, 2007  
**APPLICATION:** To all initial decisions on or after August 14, 2007

#### **#26.04**      *Recognition by Order Dealing with a Specific Case*

The lack of prior designation or recognition by the Board of a disease as an occupational disease by any of the means specified in policy items #26.01, #26.02, or #26.03, does not mean a claim for such disease will not be considered on its merits. Such disease may not have been previously designated or recognized due to weak or a complete absence of medical and scientific information which causally associates such disease with employment. If the merits and justice of an individual claim for such a disease warrant its recognition as an occupational disease, the Board may do so "by order dealing with a specific case" (section 1).

The effect of such an order is to accept the claim for compensation purposes without establishing an institutional memory for decision-makers or an expectation for others who may suffer from that disease that the disease may be due to the nature of some employment. In other words, the disease will be recognized as an occupational disease limited to the specific facts of that individual claim.

This allows an avenue of recognition for unique, meritorious, individual disease claims. As the Board repeatedly encounters such claims for a particular disease, it may determine that a higher level of designation or recognition is warranted for that disease.

A Board officer upon investigating an individual claim may find that the condition suffered by the worker is not one listed in the first column of Schedule B, nor is it one which has been previously designated or recognized by the Board as an occupational disease under section 6(4.2). If the Board officer concludes, after seeking appropriate input from both the worker (or their legal representative) and the employer (if a specific employer is identified) that the facts warrant

recognition of the worker's condition as an occupational disease, the Board officer will refer the claim with a recommendation to that effect to a panel made up of his or her Client Services Manager, (referred to in this section as the "Manager", and a Board Medical Advisor (referred to in this section as the "Medical Advisor").

If, however, after seeking such input from the worker and employer, the Board officer concludes that the facts do not warrant recognition of the worker's condition as an occupational disease, the Board officer will disallow the claim without referring it to the panel, and will notify the worker and employer. This is a reviewable decision. The Board officer shall advise the Manager that the worker's condition is not one previously designated or recognized by the Board as an occupational disease, the nature of the condition, and the Board officer's decision to disallow the claim.

The Manager, upon receipt of a recommendation from the Board officer for recognition of the worker's condition as an occupational disease, and after considering and discussing the claim with the Medical Advisor and after completing any further investigations which he or she considers appropriate, will determine whether the condition reported is one which should be recognized by the Board as an occupational disease for the purposes of that claim. If so, he or she will make an order to that effect which is recorded on the claim. The Manager will keep a record of all such referrals under this section.

If, after considering a referral under this section, the Manager concludes that the reported condition might not be recognized as an occupational disease, the Manager will first advise the worker (or in the case of a deceased worker, their legal representative) and give him or her an opportunity to respond. A decision of the Manager not to recognize the condition as an occupational disease for the purposes of that claim is a reviewable decision.

Where the Manager makes an order to recognize the condition as an occupational disease for the purposes of that claim, the claim is returned to the Board officer who will determine all other relevant issues, including whether the worker is entitled to benefits provided for under the *Act*. The making of such an order by the Manager is a reviewable decision.

Where the Manager is not the Client Services Manager, Occupational Disease Services, he or she will ensure that the Client Services Manager, Occupational Disease Services is provided with written notice of any decisions under policy item #26.04.

The designation or recognition of an occupational disease by inclusion in Schedule B, under section 6(4.2), where a particular process, trade or occupation is specified, or by regulation of general application, does not preclude its recognition by order dealing with a specific case if it occurred prior to its designation or recognition by one of the other alternate methods.

**EFFECTIVE DATE:** October 1, 2007 – Revised to delete references to memos and memorandums.

**HISTORY:** March 3, 2003 – consequential changes as to references to review

**APPLICATION:** Applies on or after October 1, 2007

## **#26.10 Suffers from an Occupational Disease**

Part of the first requirement for compensability is that the worker suffers from, or in the case of a deceased worker the death was caused by, an occupational disease. Confirming the diagnosis of many occupational diseases may be difficult. This is particularly so for poisoning by some of the metals and compounds listed in Schedule B, the symptoms of which may be similar to the symptoms caused by common complaints that produce fatigue, nausea, headache and the like.

In one Board decision, a worker was advised by the attending physician that he was suffering from lead poisoning and should temporarily withdraw from work. The Board concurred with that advice. Laboratory testing done one month later led to a conclusion that initial tests had been wrong and that the worker never did have lead poisoning. The Board concluded that in these circumstances, where the worker acted reasonably in reliance on medical advice that the Board agreed with, the merits and justice of the claim warranted a conclusion that the worker was suffering from an occupational disease at the time in question even though in retrospect this was proven not to be the case. (2) The cost of compensation paid on a claim of this type is excluded from the employer's experience rating (see policy item #113.10).

## **#26.20 Establishing Work Causation**

The fundamental requirement for a disease to be compensable under section 6(1) of the *Act* is that the disease suffered by the worker is "due to the nature of any employment in which the worker was employed whether under one or more employments".

There are two approaches to establishing work causation.

### **#26.21 *Schedule B Presumption***

Section 6(3) provides:

If the worker at or immediately before the date of the disablement was employed in a process or industry mentioned in the second column of Schedule B, and the disease contracted is the disease in the first column

of the schedule set opposite to the description of the process, the disease is deemed to have been due to the nature of that employment unless the contrary is proved

The primary significance of Schedule B is with its use as a means of establishing work causation.

The fundamental purpose of Schedule B is to avoid the repeated effort of producing and analyzing medical and other evidence of work-relatedness for a disease where research has caused the Board to conclude that such disease is specific to a particular process, agent or condition of employment (see policy item #26.01). Once included in Schedule B, it is presumed in individual cases that fit the disease and process/industry description that the cause was work-related. A claim covered by Schedule B can be accepted even though no specific evidence of work relationship is produced. A review of the available medical and scientific evidence would establish a likely relationship between the disease and the employment. The listing in the Schedule avoids the effort of producing the evidence in every case. Where the research does not clearly relate the disease to particular employments, the disease is not listed in Schedule B and the issue of work-relatedness must be determined on a case-by-case basis (see policy item #26.22).

If at the time a worker becomes disabled by a disease listed in Schedule B, or if immediately before such date, such worker was employed in the process or industry described in the second column of the Schedule opposite to such disease, the worker is entitled to a presumption that the disease was caused by their employment, "unless the contrary is proved". This presumption applies whether the disease manifests itself while the worker is at work, at home, while away on holidays, or elsewhere. The words "immediately before" used in section 6(3) are intended to deal with those situations where someone has been employed in the process or industry described in the Schedule, and has left that employment a very short time prior to the onset of the disease.

If a worker becomes disabled by a disease listed in Schedule B but at the relevant time had not been employed in the process or industry described in the Schedule, the claim may still be an acceptable one, however no presumption in favour of work-relatedness would apply. In this event establishing work causation follows the approach covered in policy item #26.22.

Inclusion of the words "unless the contrary is proved" in section 6(3) means that the presumption is rebuttable. Even though the decision-maker need not consider whether working in the described process or industry is likely to have played a causative role in giving rise to the disease, they must still consider whether there is evidence which rebuts or refutes the presumption of work-relatedness.

The standard of proof to be applied in determining whether the presumption has been rebutted is proof on a balance of probabilities. This is the same basic standard of proof applicable in the workers' compensation system. If the evidence is more heavily weighted in favour of a conclusion that it was something other than the employment that caused the disease, then the contrary will be considered to have been proved and the presumption is rebutted. The gathering and weighing of evidence generally is covered in policy items #97.00 through #97.60.

Difficulties may arise in determining whether the worker was employed in the process or industry described in the second column. This often arises because of the use of such words as "excessive" or "prolonged". While the Board would like to define more precisely the amount and duration of exposure required instead of using these words, it is usually not possible. The exact amounts will often vary according to the particular circumstances of the work place and the worker, or may not be quantified with sufficient precision by the available research. However, while such words are of uncertain meaning, there is valid reason for inserting them. Individual judgment must be exercised in each case to determine their meaning, having regard to the medical and other evidence available as to what is a reasonable amount or duration of exposure.

**EFFECTIVE DATE:            June 1, 2004**

**APPLICATION:                All decisions, including appellate decisions, made on or after June 1, 2004.**

### **#26.22        *Non-Scheduled Recognition and Onus of Proof***

In some cases a worker may suffer an occupational disease not listed in Schedule B. In other cases a worker may suffer from an occupational disease listed in Schedule B but was not employed in the process or industry described opposite to it in the Schedule. In some cases a worker may suffer a disease not previously designated or recognized by the Board as an occupational disease. Here, the decision on whether the disease is due to the nature of any employment in which the worker was employed, is determined on the merits and justice of the claim without the benefit of any presumption. The same is true if for any other reason the requirements of section 6(3) are not met.

## **#31.90 Assessment of Permanent Disability Awards for Traumatic Hearing Loss under Section 5(1)**

Disabilities arising from traumatic hearing loss covered by section 5 of the *Act* are assessed in accordance with the Permanent Disability Evaluation Schedule, Items 91 to 103. See Appendix 4, pages A4-6 and A4-7.

To determine the percentage of disability in a case of bilateral traumatic hearing loss, a calculation is first made of the average hearing thresholds in the three frequencies of the speech range, i.e. 500 Hz, 1,000 Hz, and 2,000 Hz. A deduction is then made of 0.5 decibels for each year the claimant's age exceeds 50 to allow for presbycusis. This is done for each ear.

The net decibel loss in each ear is then translated into a percentage of disability by taking the nearest figure in the schedule. For example, if the net loss is 48 decibels, the percentage for 50 decibels is taken, i.e. 1.3%. An enhancement factor is also applied. This involves adding to the percentage of disability which the schedule allots to the poorer ear nine times the percentage it allots to the better ear. (13)

## **#32.00 OTHER MATTERS**

### **#32.10 Psychological/Emotional Conditions**

The Board does accept claims for personal injury where the injury consists of a psychological condition or where the psychological condition is a consequence of a compensable personal injury or occupational disease. (14) However, the Board has not recognized any psychological or emotional conditions as occupational diseases related to employment.

#### **#32.15 *Alcoholism***

Alcoholism and alcohol-related cirrhosis of the liver have not been recognized by the Board as occupational diseases. (15)

Research indicates that many factors may be operative in causing alcoholism. While employment is one of the suggested factors, the evidence does not clearly support a conclusion that employment does have causative significance or that, if it does, it has particular significance over and above the others. It appears rather as just one factor, along with the alcoholic's individual physiology and psychology, their family, social and cultural surroundings and their own personal inability to control consumption.

## #32.50 "Date Of Injury" For Occupational Disease

For purposes of establishing a wage rate on a claim for occupational disease (determining the average earnings and earning capacity of the worker at the time of the injury), the Board officer will consider the occurrence of the injury as the date the worker first became disabled by such disease. A worker will be considered disabled for this purpose when they are no longer able to perform their regular employment duties and as such would in the ordinary course sustain a loss of earnings as a result. This date may or may not correspond with the date the worker was first diagnosed with the occupational disease.

The date of the worker's first seeking treatment by a physician or qualified practitioner for the occupational disease is used for administrative purposes. For example, this date will be used where there is no period of disability. Where the worker's condition was not at that time diagnosed as an occupational disease, the relevant date is the date the occupational disease is first diagnosed. These dates may also, in the absence of evidence to the contrary, be used as the date of disablement for the purpose of determining compensation entitlement under section 55 of the *Act*.

**EFFECTIVE DATE:** October 1, 2007 – Revised to delete reference to assigning a claim number.

**APPLICATION:** Applies on or after October 1, 2007

## #32.55 *Time Limits and Delays in Applying for Compensation*

A person must apply for compensation for death or disablement due to an occupational disease within the time limits set out in section 55 of the *Act*. That person can be the worker or the worker's dependant(s) if the worker has died. People who delay in applying for compensation may lose or limit their right to compensation because the Board can only consider an application on its merits if the requirements of section 55 are met. One of the purposes of these time limits is to ensure the Board is given early notice of the claim so that the relevant evidence can be obtained when it is more readily available.

A person applying for compensation for an occupational disease must generally do so within one year of the date of death or disablement (in most cases a disablement will precede any death). There are exceptions as noted below. If the worker is alive and if the occupational disease has never caused a disablement, then time has not yet started to elapse for the purposes of section 55. Section 55(2) says in part:

- (2) Unless an application is filed, or an adjudication made, within one year after the date of . . . death or disablement from occupational disease,

no compensation is payable, except as provided in subsections (3), (3.1), (3.2), and (3.3).

Under the terms of a predecessor to the current section 55, a claim must be denied if a person applies to the Board more than one year after the worker's most recent disablement or after the worker's death if:

- the death occurred before January 1, 1974, or
- the most recent disablement occurred before January 1, 1974 and the exposure to the cause of the occupational disease in British Columbia did not continue beyond that date.

### **#32.56**     *Applicants Who File Within Three Years*

The Board may consider paying compensation benefits even though a person applies more than one year after the death or disablement due to the occupational disease if:

- he or she applies within three years after the death or disablement, and
- special circumstances precluded applying within one year.

Section 55(3) says:

- (3) If the Board is satisfied that there existed special circumstances which precluded the filing of an application within one year after the date referred to in subsection (2), the Board may pay the compensation provided by this Part if the application is filed within 3 years after that date.

For a discussion of special circumstances, see policy item #93.22.

If special circumstances do not exist, the Board cannot consider the claim, unless it meets section 55(3.2), because the application will be out of time.

### **#32.57**     *Applicants Who File Beyond Three Years*

A person who applies more than three years after the date of death or disablement due to the occupational disease might still receive compensation benefits under section 55(3.1). If special circumstances precluded applying within one year, the Board may still consider starting compensation benefits from the date the Board received the application. However, the Board cannot consider compensation benefits for periods before that date, unless the claim meets section 55(3.2).

Section 55(3.1) says:

- (3.1) The Board may pay the compensation provided by this Part for the period commencing on the date the Board received the application for compensation if
  - (a) the Board is satisfied that special circumstances existed which precluded the filing of an application within one year after the date referred to in subsection (2), and
  - (b) the application is filed more than 3 years after the date referred to in subsection (2).

As stated before, if special circumstances do not exist, the Board cannot consider the claim, unless it meets section 55(3.2), because the application will be out of time.

### **#32.58**      *Newly Recognized Occupational Diseases*

As noted in policy item #25.00, it is often more difficult to determine whether a person's employment caused a disease than to determine whether it caused a personal injury. Our knowledge about the role a particular kind of employment may have in causing various diseases changes over time. In recognition of this difficulty, part of section 55 applies only to claims for occupational disease.

The Board may consider paying compensation benefits for a death or disablement due to an occupational disease if all three of the following conditions apply:

1. At the time of the worker's death or disablement, the Board does not have sufficient medical or scientific evidence to recognize the disease as an occupational disease for this worker's kind of employment (even though the Board may have recognized it as an occupational disease for other kinds of employment).
2. The Board subsequently obtains sufficient medical or scientific evidence to cause it to recognize the disease as an occupational disease for this worker's kind of employment.
3. The application for compensation is made within three years after the date the Board recognized the disease as an occupational disease for this worker's kind of employment.

Section 55(3.2) says:

- (3.2) The Board may pay the compensation provided by this Part if
  - (a) the application arises from death or disablement due to an occupational disease,

- (b) sufficient medical or scientific evidence was not available on the date referred to in subsection (2) for the Board to recognize the disease as an occupational disease and this evidence became available on a later date, and
- (c) the application is filed within 3 years after the date sufficient medical or scientific evidence as determined by the Board became available to the Board.

If, after July 1, 1974, and before August 26, 1994, the Board has considered an application and has determined that all or part of the claim cannot be paid because of the wording of section 55 then in effect, the Board may now under section 55(3.3) reconsider the claim and pay compensation for those periods previously denied if it meets the requirements of section 55(3.2).

Section 55(3.3) says:

- (3.3) Despite section 96(1), if, since July 1, 1974, the Board considered an application under the equivalent of this section in respect of death or disablement from occupational disease, the Board may reconsider that application, but the Board must apply subsection (3.2) of this section in that reconsideration.

For example, in the 1970s sufficient medical or scientific evidence was not available for the Board to recognize an association between exposure to coal tar pitch volatiles in aluminum smelters and an excess risk of bladder cancer. It was not until the late 1980s that sufficient evidence became available for the Board to recognize such an association. (However, the Board had earlier recognized that there was an association between bladder cancer and prolonged exposure to certain chemicals used primarily in the manufacture of rubber and dyes. In 1980 “primary cancer of the epithelial lining of the urinary bladder” was added to Schedule B, with a corresponding presumption in favour of causation where the worker had prolonged exposure to any of three listed chemicals.)

On March 13, 1989, the Board issued a policy directive recognizing bladder cancer as an occupational disease for workers employed in aluminum smelting, dependent on the concentration and length of exposure to coal tar pitch volatiles.

Section 55(3.2) allows the Board to consider the payment of compensation benefits for any worker disabled by bladder cancer who was exposed to sufficient doses of coal tar pitch volatiles while employed in the aluminum smelting industry if:

- the exposure did not end before January 1, 1974, and
- the Board received the application not later than March 13, 1992.

Section 55(3.3) allows the Board to reconsider any claims for bladder cancer that meet the requirements of section 55(3.2) and to pay compensation for any periods previously denied because of the wording of the earlier section 55 in effect since July 1, 1974. Sections 55(3.2) and (3.3) went into effect on August 26, 1994. If a claim for bladder cancer is filed after March 13, 1992, then the requirements of sections 55(2), (3), or (3.1) must be met before compensation can be paid.

**EFFECTIVE DATE:** March 3, 2003 (as to new wording of section 55(3.3))  
**APPLICATION:** Not applicable.

### *#32.59 Discretion to Pay Compensation*

As stated in policy item #93.22, even though special circumstances may have precluded the filing of the application within one year, the Board has discretion under section 55 whether or not to pay compensation. In exercising that discretion, the Board considers whether the time elapsed since the death or disability due to the occupational disease has prejudiced its ability to investigate the merits of the claim, including determining whether the worker was disabled from earning full wages at the work at which he or she was employed.

The Board considers the availability of evidence, such as:

- medical records about the worker's state of health at relevant times (cause of death in the case of a deceased worker)
- employment records that may document exposures to contaminants or hazardous processes, or periods of disability that may have been due to the occupational disease
- evidence from co-workers or others who may know about the worker's employment activities.

The Board will generally decide not to pay compensation if so much time has elapsed that it cannot reasonably obtain sufficient evidence to determine whether:

- the worker's disease was causally connected to the employment, or
- the worker was disabled by the disease when claimed.

A request for review by the Review Division can be made on a Board decision not to pay compensation.

Where a worker has experienced more than one period of disablement from the occupational disease for which the worker intends to claim, then each period of disablement will have to be individually considered to determine if the requirements of section 55 are met with respect to that period.

**EFFECTIVE DATE:** March 3, 2003 (as to reference to Review Division)  
**APPLICATION:** Not applicable.

## **#32.80 Federal Government Employees**

The rights of employees of the Federal Government to compensation for occupational disease are set out in section 4 of the *Government Employees Compensation Act*. This provides that an employee who . . . is disabled by reason of an industrial disease due to the nature of the employment; and . . . the dependants of an employee whose death results from such . . . industrial disease . . . are, notwithstanding the nature or class of such employment, entitled to receive compensation at the same rate and under the same conditions as are provided under the law of the province where the employee is usually employed. Section 4(4) of this *Act* applies a similar provision to railway employees of the Federal Government.

The meaning of “employee” is discussed in policy item #8.10. The place where an employee is usually employed is discussed in policy item #24.00.

## **#32.85 *Meaning of “Industrial Disease” under Government Employees Compensation Act***

“Industrial Disease” is defined in section 2 to mean “any disease in respect of which compensation is payable under the law of the province where the employee is usually employed respecting compensation for workmen and the dependents of deceased workmen”.

Any employee who is disabled by reason of any disease that is not an occupational disease but is due to the nature of the employment and peculiar to or characteristic of the particular process, trade or occupation in which the employee is employed at the time the disease was contracted (17) and the dependants of a deceased employee whose death is caused by reason of such a disease, are entitled to receive compensation at the same rate as they would be entitled to receive under the *Government Employees Compensation Act* if the disease were an occupational disease, and the right to and the amount of such compensation is determined by the same board, officers or authorities and in the same manner as if the disease were an occupational disease.

## 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)

than one principal, from payments made to a principal who is personally responsible for the non-payment of assessments. (2) This also applies to situations involving personal optional protection premiums owing.

#### **#48.41**      *When Does an Overpayment of Compensation Occur?*

An overpayment is any money paid out by the Board to a payee as a result of an administrative error, fraud or misrepresentation by the worker, or where the decision was not one within the statutory authority of the Board. Administrative errors are mechanical, mathematical, or an error in implementing a decision on a claim, and similar types of errors. They do not include decisions made regarding entitlement. An overpayment may also be incurred by a doctor, qualified practitioner, or an institution following the incorrect payment of a health care benefit account by the Board.

A decision regarding entitlement which is modified or reversed by a later decision does not result in an overpayment. These are referred to as "Decisional Errors" and include errors of policy. They include situations where new information is later received which initiates a judgment change in the original decision. They can also include situations where information was available but overlooked.

Decisional errors involving actions outside the statutory authority of the Board or due to fraud or misrepresentation are corrected retroactively to the date of the original decision, and result in an overpayment.

Board policy also does not require the initiation of recovery procedures for overpayments under \$50.00 as long as there is no evidence of fraud or misrepresentation. All overpayments, irrespective of the amount, are referred to the Board's Legal Services Division where fraud or misrepresentation is indicated.

**EFFECTIVE DATE:**            October 1, 2007 – Revised to remove reference to computer errors.

**HISTORY:**                     March 3, 2003 (as to deletion of cross-references to payments to children on fatal claims, interim adjudications and appeals)

**APPLICATION:**               Applies on or after October 1, 2007

#### **#48.42**      *Recovery Procedures for Overpayments*

If, at the time of the discovery of the overpayment, payments are still being made on the claim, the amount of any overpayment will be recovered from those payments. The Board officer will as far as possible do this in a manner which causes the least hardship to the worker. Normally, the Board officer will recover the amount owing by instalments. If payments of the claim are terminated by the time the overpayment is discovered or before full recovery can be obtained, the

procedures outlined below are followed. However, if a request for a review by the Review Division or an appeal to the Workers' Compensation Appeal Tribunal against the overpayment is lodged, re-collection procedures are as outlined in policy item #48.46.

1. The Vocational Rehabilitation Services and Compensation Services Departments will conduct the initial collection procedure which will include the Board officer making personal contact with the worker in addition to sending two letters, one immediately and one 30 days later. For overpayments in excess of \$500, the second letter advises that unpaid accounts will be turned over to the Board's Collections Section.
2. When the overpayment is 70 days overdue it will be sent to the Board's Collections Section. Unless there is evidence of fraud or misrepresentation, claims for overpayments under \$500 are not sent to Collections.
3. A letter will be sent to the worker by a Collections Officer at the 70-day overdue date indicating that the overpayment has been transferred to the Board's Collections Section and suggesting that payment be made within a month in order to avoid possible legal action. This letter will make it clear that the Board is serious about collecting the overpayment.
4. If payment is not received within 30 days, or a reasonable payment plan arranged, the Collections Officer will attempt to make telephone contact with the worker or pay a personal visit.
5. If this does not result in positive arrangements for payment, a final, more strongly worded letter will be sent. An asset search will be conducted and if there is a reasonable expectation that money is collectible, the account will be turned over to the Board's Legal Services Division for attention and action. The result of this action could be the seizing of assets or garnisheeing wages.

Policy item #50.00 sets out the procedures regarding the crediting of interest to retroactive wage-loss and permanent disability lump-sum payments. In the case of claims overpayments, interest charges only apply to amounts due where the overpayment is the result of fraud, misrepresentation or the withholding of information by the worker. Interest is not charged on overpayments that result from the correction of an error. The charging of interest on an overpayment must be approved by a Manager or a Director.

In the case of doctors and other health care benefit payees, overpayments are handled by the Board by making a deletion from future payments. There is no attempt by the Board to obtain the recovery of such an overpayment from a

worker who received the health care benefits unless the costs of the health care benefits were paid directly to the worker.

**EFFECTIVE DATE:** March 3, 2003 (as to references to review, the Review Division and the Workers' Compensation Appeal Tribunal)

**APPLICATION:** Not applicable.

#### **#48.43**      *Recovery of Overpayments on Reopenings or New Claims*

If there is an outstanding overpayment made to a worker on a claim and that claim is reopened or a new claim for the same worker is established, the overpayment will be recovered from that worker. Normally, this will take place following contact with the worker to determine the manner in which the overpayment is to be recovered, either in full from the first payment of wage loss, or where the overpayment is a considerable sum of money, at a reasonable amount every two weeks during the period of disability. Every attempt will be made to recover the full amount of the overpayment.

Where there is an outstanding overpayment to either the worker or the employer and the claim is reopened or a new claim established, and if the worker is still employed by the same employer and they continue full salary, the overpayment will be recovered in full from that employer before subsequent wage loss is paid to them. The employer will be notified that this process is taking place. No recoveries are made from workers for overpayments made to employers.

Subject to the exception referred to in the preceding paragraph, the recovery of overpayments will be made only from those to whom the overpayment is made.

The general law of bankruptcy releases a bankrupt from all claims provable in bankruptcy upon discharge from bankruptcy. Therefore, where an overpayment has been incurred prior to the bankruptcy date, the Board does not take legal proceedings against the discharged bankrupt to recover the overpayment. Should a subsequent claim be submitted or the claim reopened, no attempt to recover such an overpayment is made.

#### **#48.44**      *Deduction of Overpayments from Permanent Disability Awards*

Where a worker is entitled to a permanent partial disability award, attempts are made to recover the overpayment prior to establishing the award. Whenever possible, the full amount will be recovered direct from the worker. Where recovery is not made prior to the payment of the award, the recovery may be made from the award itself either from the initial payment or on the basis of a permanent disability award adjustment as follows:

- (a) non-payment of the full permanent disability award for a fixed term;
- (b) a partial reduction of the permanent disability award for a fixed term;
- (c) a partial reduction of the permanent disability award for the duration of a worker's entitlement to a permanent disability award.

In the case of a large overpayment and/or a small award, it is also possible that the capitalization of the full award may be required to offset the overpayment.

Where a previous permanent disability award has been made and the overpayment is on a subsequent claim, the Board does not usually elect to recover the overpayment from the prior award. This is an option that is only used as a last resort. The choice is first given to the worker as to how she or he wishes to repay the overpayment on the understanding that the Board would prefer not to interfere with the ongoing permanent disability award.

Where an award has been suspended for the purpose of paying off an amount owing to the Board, the worker will, every six months, be sent a statement showing the results of any changes in the permanent disability award amount because of cost of living adjustments, the amounts credited to the worker's account as a result of the suspension, and the amount still owing.

Permanent disability awards are made to workers and pensions are paid to dependants at the end of each calendar month. Should a worker or dependant die during the month for which a full month's payment has been made, no deduction is made nor is any overpayment declared.

#### **#48.45      *Deduction of Overpayments from Vocational Rehabilitation Payments***

An overpayment may be recovered from a vocational rehabilitation assistance payment at the discretion of the Board officer in Vocational Rehabilitation Services Department in consultation with the Board officer in Compensation Services Department. Every attempt is, however, made by the Board to have the worker make arrangements to repay the overpayment in some other method rather than reduce a vocational rehabilitation payment. Recovery from a vocational rehabilitation payment would only occur under exceptional circumstances.

#### **#48.46      *Reviews and Appeals on Overpayments***

A request for a review by the Review Division may be made on the question of whether the worker owes money to the Board and, if so, the amount owing.

## **#71.40      Adjustments**

The Board may adjust a worker's average earnings subject to reconsideration rules set out in section 96(5) of the *Act*, where they were based upon incorrect information. If the adjustment results in a decrease in the value of the worker's earnings, the Board officer will consider policy item #48.41 in determining whether to declare an overpayment. If it results in an increase, a retroactive adjustment may be made.

**EFFECTIVE DATE:**            October 1, 2007 – Revised to include reference to section 96(5) of the *Act* and to delete the term net.

**APPLICATION:**                Applies on or after October 1, 2007

## NOTES

- (1) See policy item #34.40
- (2) See policy item #34.20
- (3) See policy item #65.04
- (4) See policy items #34.20; #35.23; #37.20; #39.60
- (5) See Item AP1-2-3 of the *Assessment Manual*
- (6) See Item C8-56.00 and Item C8-56.40
- (7) See Item AP1-1-5 of the *Assessment Manual*
- (8) See Item AP1-3-1 of the *Assessment Manual*
- (9) See policy item #34.40
- (10) s.33(10)
- (11) s.33(9)
- (12) See policy item #70.20
- (13) See policy item #69.00
- (14) See policy item #69.10

Where, in a case of emergency, or for other justifiable cause, a physician or qualified practitioner other than the one provided by the Board is called in to treat the injured worker, and if the Board finds there was a justifiable cause and that the charge for the services is reasonable, the cost of the services shall be paid by the Board. (8)

**EFFECTIVE DATE:** December 31, 2003

**APPLICATION:** On December 31, 2003, this policy was amended to reflect the amendment of section 5.1(1) of the *Act* and the introduction of sections 5.1(2) to (4) of the *Act*. The amended policy applies to injuries on or after December 31, 2003.

## **#74.20 Chiropractors**

### **#74.21 *Duration of Treatment***

After eight weeks of treatment by a chiropractor, or earlier if there is any ground for suspecting that the worker is not receiving proper treatment, the claim must be referred to a Board Medical Advisor for review. The Board Medical Advisor will decide whether a continuance of treatment by the chiropractor should be authorized. It is necessary when such a request is received that the medical factors be considered and the various options evaluated. The main options which should be considered in order of preference are:

1. Have the worker examined at the Board.
2. Refer the worker for an orthopaedic or other appropriate specialist consultation.
3. Agree to an extension.

Giving preference to an examination by a Board Medical Advisor is simply an effective method of determining whether options 2 or 3 are necessary or appropriate, or whether some other approach or decision is indicated.

The third option is generally limited to situations where recovery appears imminent. The Board Medical Advisor should be satisfied that the worker's condition is improving. The duration of additional chiropractic treatment must be clearly designated, including the frequency of the treatments. Any extension should be limited to a maximum of four weeks. Where a request is received for an extension beyond this point, approval cannot be granted unless an examination is carried out by a Board Medical Advisor or there has been a specialist consultation. It is expected that extensions beyond 12 weeks would only occur in rare and unusual circumstances.

The reasons for accepting or denying a request for an extension of chiropractic care must be recorded on the claim file and since it is a decision that is

reviewable by the Review Division, it must be communicated in writing by the Board officer to the worker and the chiropractor. When recording their opinions on claim files, Board Medical Advisors should clearly define the reasons in support of their recommendations by outlining in what way an extension may produce an improvement in the worker's condition, or alternatively, why further treatments are likely to be ineffective. Under no circumstances should Board Medical Advisors make statements in the claim file such as, "I don't think this should be denied unless it is too frequent" or "I have no objection to chiropractic treatment if the worker thinks it is going to help."

Situations are occasionally met where claimants receive chiropractic treatments on a long-term basis (for example, one treatment per month for six to twelve months). Such treatments are probably more in the nature of preventative measures or as a means of forestalling future problems. The purpose of section 21 of the *Act* is to provide health care benefits for the treatment of injuries or occupational disease. As such, long-term chiropractic manipulation of this type will not be considered acceptable.

As a general rule, the Board will not pay for more than one treatment by a chiropractor per day. Any exception to this rule should normally be authorized beforehand by the Board. No exception will be allowed on the grounds that the additional treatment is needed to compensate for the bad effects of the journey to the chiropractor when, by seeking treatment from another chiropractor or different type of practitioner at a different location, the journey could have been avoided.

The Board will also not pay for daily treatment nor for house visits after the initial treatment unless the necessity is clearly indicated.

**EFFECTIVE DATE:** October 1, 2007 – Revised to delete references to memos and memorandums.

**HISTORY:** March 3, 2003 – consequential changes as to references to review

**APPLICATION:** Applies on or after October 1, 2007

## **#74.22**      *Scope of Chiropractic Treatment*

The Board has established the guidelines set out below regarding the acceptability of chiropractic treatment.

1. Where chiropractic treatment is directed at the spinal column in respect of complaints in the extremities for which a claim has been accepted, the Board may refuse responsibility for the treatment if it concludes that the injury at work did not affect the spine, but was to the extremities only.

2. Where chiropractic treatment is directed at the spinal column for problems in an extremity and it is accepted that the work injury caused the condition of the spinal column, the treatment may be acceptable if it is concluded that the problem in the extremity arose from that condition.
3. Treatment by a chiropractor to the spine or any other articulations of the body must be reasonable and acceptable treatment for the medical problem experienced by the worker.
4. Chiropractic treatment to the spinal column is not acceptable where:
  - (a) there is clinical evidence to suggest nerve root pressure with definite and progressive neurological findings; or
  - (b) there are fractures, dislocations, underlying bony pathology, or other conditions requiring immediate surgical or medical treatment.
5. Chiropractic treatment to the articulations of the extremities is not acceptable in respect of:
  - (a) fractures, dislocations, underlying bony pathology or other conditions requiring immediate surgical or other medical treatment;
  - (b) soft tissue injuries, including muscle contusions, hematomas, infectious conditions, tenosynovitis, tendinitis, bursitis, epicondylitis, carpal tunnel syndrome and Dupuytren's contracture, but excluding minor sprains and strains arising from an articular injury.
6. Prior to refusing or terminating authorization for chiropractic treatment, the Board Medical Advisor will be consulted and, in appropriate cases, the Board's Chiropractic Consultant.
7. A chiropractor who has been treating a worker will be notified of any decision by the Board to terminate its authorization for that treatment under the terms of this decision.

#### **#74.23      *Examination by the Board***

The Board may call a worker in for a medical examination at any time. (9)  
Where there is no appreciable improvement during treatment, the chiropractor may ask the Board to call the worker in for examination.

When a worker who has been treated by a chiropractor has been examined at the Board and referred by a Board Medical Advisor to a medical consultant, the chiropractor must be notified by letter.

#### **#74.24      *Consultation with Another Chiropractor***

On a problem case, a chiropractor may ask for consultation with another chiropractor. This may be allowed, but it must be authorized by a Board Medical Advisor. The responsibility for obtaining permission rests equally on the attending chiropractor and the consultant before the consultation is carried out, otherwise, the consultation fee may not be allowed. (10)

#### **#74.25      *Physiotherapy***

Physiotherapy cannot be prescribed by a chiropractor. Concurrent treatment is discussed in policy item #74.60.

#### **#74.26      *Belts and Back Supports***

The supplying of belts and back supports cannot be granted on the order of a chiropractor, but may be approved by a Board Medical Advisor. (11)

#### **#74.27      *X-rays***

X-rays may be taken for the purpose of assisting a chiropractor in the treatment of a worker, subject to the following:

1. The Board will not pay for full-length views of the spine.
2. With respect to x-rays of the affected anatomical areas of the spine, the minimum examination should be as follows:
  - (a) Cervical spine – A.P. and lateral as well as an open-mouth view of the odontoid. Oblique views to be added as indicated.
  - (b) Dorsal spine – A.P. and lateral full-length views with additional coned views of areas not clearly shown on the two primary views.
  - (c) Lumbar spine – A.P., lateral, and a coned lateral view of the lumbosacral junction (oblique views to be taken in addition, if indicated).

Payment will not be made for x-rays of non-interpretable quality, for x-rays of areas of the body not injured, and for excess, or duplication of, x-rays.

Complete x-ray reports, signed by the chiropractor, must be submitted within seven days. The x-rays should be available to the Board on request.

### **#74.30 Dentists**

The Health Care Services Department accepts responsibility for dental repair for damage caused by compensable personal injury or occupational disease. Payments are based on the fee schedule approved by the Board. Prior to commencing the work, a practitioner should submit an estimate to the Board outlining the proposed treatment. Appropriate authorization will then be given to the practitioner.

Where there are two equally functional treatment plans, the Board authorizes the plan that is expected to be the least costly in the long term. If a worker declines the treatment plan authorized by the Board and proceeds on another treatment plan, the coverage will not exceed the amount of payment that would have been made for the authorized treatment plan.

Where a claim is submitted for work-caused damage to dentures, the claim is adjudicated under section 21(8)(b) of the *Act* rather than section 5 or 6 of the *Act*. This imposes different requirements for coverage. Further details are contained in policy items #23.00 to #23.70.

Claims for damage to crowns and fixed bridgework are adjudicated as personal injury under section 5(1) (see policy item #13.00) rather than section 21(8)(b) of the *Act* as crowns and fixed bridgework are regarded as part of the natural anatomy.

### **#74.40 Naturopathic Physicians**

After eight weeks of treatment by a naturopath, or earlier if there is any ground for suspecting that the worker is not receiving proper treatment, the worker's claim must be referred to a Board Medical Advisor. The Board Medical Advisor may take any of the courses set out in policy item #74.21.

The Board will not pay for house visits after initial treatment, unless the necessity is clearly indicated.

Fees may be paid for simple laboratory procedures such as hemoglobin, erythrocyte sedimentation rate and urinalysis. The Board may also accept fees from a medical laboratory for tests related to the condition under treatment incurred on the worker's behalf.

The Board may accept the costs of normal services from radiologists who provide this service on behalf of injured workers to naturopaths.

The Board may call a worker in for examination at any time. Where there is no appreciable improvement during treatment, the naturopathic physician may ask the Board to call the worker in for examination. (12)

## **#74.50 Selection of Physician or Qualified Practitioner**

Section 21(7) of the *Act* provides that “Without limiting the power of the Board ... to supervise and provide for the furnishing of health care in every case where it considers the exercise of that power is expedient, the Board must permit health care to be administered, so far as the selection of a physician or qualified practitioner is concerned, by the physician or qualified practitioner who may be selected or employed by the injured worker.”

Subject to the Board’s overriding supervisory power, this provision entitles the worker to select his or her own practitioner. It should be noted that:

1. The section makes no distinction between the original selection and the changing of a practitioner.
2. The section makes no distinction between a practitioner qualified under the *Medical Practitioners Act* and one qualified under the *Podiatrists Act*, the *Chiropractors Act*, the *Dentists Act* or the *Naturopaths Act*, provided that the practitioner accepts Board patients and the appropriate fee schedule.

In certain situations, the Board may object to the selection made by the worker, and may object to a change of practitioner. For example, the Board may be likely to object if it appears that the worker is shopping around to find the practitioner who is thought likely to write the most favourable report. On the other hand, the Board will not object, either to an original selection or to a change, simply on the ground that it does not think the worker is making the wisest choice, or because the worker’s judgment in the selection differs from the judgment that the Board would itself have made.

Where a worker wishes to make a change of physician or qualified practitioner, the following guidelines apply:

1. Where a worker moves, a new physician or qualified practitioner may be selected in the new community without prior permission from the Board.
2. Where a worker receives emergency treatment from a physician who is not the family physician, the worker may transfer to the family physician.

3. A worker may wish to transfer because of a loss of rapport with his or her attending physician, or because of a preference for a type of treatment available from a different type of practitioner. Where it comes to the attention of the Board officer that a worker has made or plans to make a change of this kind, the matter will be referred to a Board Medical Advisor. The change will be permitted unless the Board Medical Advisor concludes that it is likely to be harmful, or so medically unsound that it ought to be prohibited.
4. Where it appears that the worker is shopping around for a most favourable medical report, the matter should be referred to a Board Medical Advisor to consider whether an examination at the Board would be appropriate.
5. If it appears that a worker is making multiple changes of physician or qualified practitioner, the matter will be referred to a Board Medical Advisor to consider whether a rational treatment program is being followed.

If the Board Medical Advisor concludes that a change of physician or qualified practitioner should be refused, the decision must be communicated to all physicians and qualified practitioners concerned, as well as to the worker. The physician or qualified practitioner to whom the refusal relates will be notified that the Board will honour an account for treatment up until the date of the advice, but will not accept responsibility for treatment beyond that date.

Any decision to refuse or terminate treatment by a "qualified practitioner" is not legally defensible if it rests on the general objection to the treatment of any patient by that kind of practitioner. Any decision not to allow a worker the "qualified practitioner" of choice must be justified by a judgment made in the particular case that the selection would be medically unsound by reason of circumstances relating to that particular case.

A Board Medical Advisor may arrange for the worker to be referred to a specialist, however, the worker is not forced to accept treatment he or she does not wish to receive nor treatment from a doctor against whom the worker has some objection.

A worker cannot attend a doctor whose right to render health care has been cancelled or suspended under the provisions referred to in policy item #95.30.

## **#74.60 Concurrent Treatment**

The general view of the Board is that a worker should be under treatment by only one physician or other qualified practitioner at a time.

There are cases, however, where concurrent treatment may be deemed acceptable. For example, the same disability may require treatment by a general practitioner and a specialist, by two or more specialists, or the worker may benefit from treatment by a qualified practitioner with concurrent monitoring by the attending physician.

Where reports indicate a worker is receiving concurrent treatment, the claim will be referred to a Board Medical Advisor for review. Where the Board Medical Advisor concludes concurrent treatment is reasonable, approval will be granted.

Concurrent treatment will not be refused by the Board simply because it is inconsistent with a rule or policy of a professional organization.

If approval for concurrent treatment is denied, in those cases where medical reports have been submitted within a reasonable time, corresponding health care benefit accounts will be paid to the date of the written notification.

## **#75.00 HEALTH CARE RENDERED BY PERSONS OTHER THAN PHYSICIANS OR QUALIFIED PRACTITIONERS**

Persons other than physicians or qualified practitioners may be authorized to render health care, for example, optometrists, dental mechanics, nurses and physiotherapists.

### **#75.10 Physiotherapists**

Physiotherapists, who are members in good standing of the Canadian Physiotherapy Association or the British Columbia Association of Physiotherapists in Private Practice, may provide injured workers the specific types of treatment they are authorized by statute to render.

#### **#75.12 *Physiotherapy Given Privately***

The following policy guidelines now apply for all Workers' Compensation Board workers with the exception of paraplegics and quadriplegics.

1. Physiotherapy prescribed by the attending physician may be continued up to a maximum of **eight weeks** per case.
2. Such physiotherapy treatment shall not exceed one treatment per day.

3. Such physiotherapy shall be rendered by a chartered or registered physiotherapist.
4. The attending physician and the physiotherapist are required to be in communication regarding treatment progress.
5. In cases where the attending physician considers that physiotherapy should continue beyond eight weeks, prior authorization must be obtained from a Board Medical Advisor. This may be done by writing or telephoning the Board. At the time the authorization is given, the period of additional treatment will be specified (up to a maximum of eight weeks additional).
6. Where it is not feasible for the attending physician to obtain prior authorization, the request shall be submitted by the attending physiotherapist.
7. The physiotherapist may also communicate with the Board concerning patient progress. Such communication may be in the form of a letter or copies of progress reports sent to the physician.
8. Any case requiring physiotherapy treatment in excess of 16 weeks total accumulative amount shall be referred to the appropriate Board Medical Advisor/Consultant for consideration of approval to continue beyond this interval.

## **#75.20 Nursing Services**

For seriously ill or injured workers who need additional nursing service, the necessary nursing service is determined and provided by the hospital. The Board is not responsible for payment of special duty nursing fees. If the worker or the worker's family desire to have a special nurse in attendance, the cost of employing such special nursing should be met by the worker. If the condition requires additional nursing service, the physician should indicate to the hospital the service necessary and discuss with the hospital any question about these requirements as this matter is outside the jurisdiction of the Board.

Temporary home nursing care is covered where it is specifically required because of the nature of the compensable medical condition. Where care is required permanently, the costs are covered under a personal care allowance (see policy item #80.00).

When a registered nurse is required as nursing escort during emergency transportation, Registered Nurses Association fees will be paid, as well as the nurse's expenses.

Reports received from Canadian Red Cross Society Outpost Hospital nurses can be accepted in lieu of medical reports if there is no physician in the immediate area.

### **#75.30 Dental Mechanics**

The fees paid to Dental Mechanics cover such necessary reports as the Board may require.

Reports submitted should state clearly the exact extent of dental damage occasioned by the accident, the method of restoration and the fee therefore itemized according to the schedule.

### **#75.40 Health Spas and Public Swimming Pools**

The costs of using spas, public swimming pools or other exercise programs that are not provided by a recognized health care professional are not recognized by the Board as a health care benefit cost.

## **#76.00 HOSPITALS AND OTHER INSTITUTIONS**

Only hospitalization that is directly necessary in the treatment of the worker's compensable injury may be paid by the Board.

### **#76.10 In-patient Treatment**

In-patient per diem rates paid to hospitals are inclusive of all costs associated with the hospitalization. Costs associated with special nurses (see policy item #75.20), beds or any other equipment are covered by the per diem rate and are not paid for separately.

The Board covers the cost of a public ward bed. However, a Board officer may authorize a private or semi-private bed where it is cost effective in minimizing wage loss resulting from a delayed admission.

A private or semi-private room will also be authorized where the critical condition of the worker requires it.

### **#76.20 Short Stay Patients**

Out-patient charges, including charges for emergency services, are covered by the Board where hospital services are necessary for the treatment. Where a physician chooses to see a patient in a hospital in lieu of an office visit, this is

considered an arrangement between the doctor and the hospital. In such cases, only the doctor's physician services are paid for by the Board.

### **#76.30 Private Hospitals**

Private hospitals may be utilized for treatment of pre-operative or post-operative patients who require active nursing care. The Board's approval must be obtained before a patient is admitted to such a hospital. If a patient is admitted without such approval, no payment will be made for hospitalization.

The attending physician must report to the Board at regular intervals regarding the patient's condition and the necessity for continued hospitalization.

The Board's approval must be obtained for any absence from the hospital for any purpose other than medical treatment and examination. No payments will be made for hospitalization during such a period of absence unless Board approval has been obtained. Any cases of intoxication, other substance abuse, or misconduct must be reported immediately to the attending physician and the Board.

### **#76.40 Laboratory Procedures**

Board responsibility is limited to laboratory procedures required for diagnosis and treatment of conditions due to the compensable injury.

### **#76.50 Application of Compensation to Worker's Maintenance in Hospital**

This is discussed in policy item #49.10.

## **#77.00 DRUGS, APPLIANCES, AND OTHER SUPPLIES**

In addition to medical examination and treatment, the *Act* provides for necessary health care benefits in the form of drugs, appliances, and other supplies.

### **#77.10 General Position**

Accounts for medicine, bandages, and other supplies are payable only when they are prescribed by the attending physician and where medical reports to the Board verify their necessity.

Medicine, bandages and other items provided during an in-patient hospital stay are covered by the inclusive per diem rate. If, however, a worker is provided an appliance or material for use after discharge, a separate charge is made by the hospital to the Board. This coverage is in lieu of the worker being required to make the purchase from a medical supply house, such as a pharmacy, following discharge.

The Board may furnish appliances:

1. of a temporary nature to aid in the worker's recovery. The appliance is supplied as a temporary measure only and may not be replaced without the authorization of the Board;
2. of a permanent type when there is a permanent disability. Such an appliance is kept in repair and replaced as required.

Requests for repair or replacement of an appliance will usually be accepted without question when the repair or replacement is such as is reasonable to expect will result from normal wear and tear. This will normally be determined from the Board's experience as to the normal maintenance requirements and normal lifespan of the item in question. When a requested repair or replacement is not, on the face of it, such as is reasonable to expect from normal wear and tear, investigation will be made as to the actual cause of the request. In general, this means that, on the one hand, responsibility will be accepted if the loss or damage is due to the wear and tear or an accident arising in the worker's particular style of life. On the other hand, responsibility will be declined if the loss or damage resulted from deliberate or reckless abuse or has occurred with excessive frequency.

The repair and replacement of appliances broken or damaged at work is discussed in policy item #23.00.

## **#77.20 Types of Supplies and Appliances**

Set out below are some of the supplies and appliances provided by the Board and the conditions under which they are provided.

The list is not all inclusive. A worker or the treating practitioner may contact the Health Care Services Department to determine if a particular item will be covered.

### **#77.21 *Eyeglasses***

Where eyeglasses are required because of an injury, the necessary corrective glasses are provided as required, as are artificial eyes. In all cases, hardened

lenses are provided. Dark glasses may be supplied if prescribed by the attending physician or specialist as necessary. Frames are also supplied if damaged or not previously utilized.

Contact lenses may be provided at Board rates if the Board Medical Advisor considers they would improve the vision of, for example, an aphakic eye or scarred cornea.

Where an injury results in serious impairment to a worker's sight, the Board may, to protect remaining vision, provide protective eyeglasses. (15) Therefore, if a worker loses the sight or a substantial part of the sight of an eye in an industrial injury, glasses with hardened lenses are provided to protect the remaining sight.

The policy regarding repair or replacement is the same as outlined in policy item #77.10.

### **#77.22      *Hearing Aids***

The provision of a hearing aid by the Board is not subject to any fixed monetary ceiling but is generally based on a negotiated fee schedule.

Where a worker is adjudged entitled to health care benefits for loss of hearing, the Board will provide such hearing aid as is reasonable and necessary to achieve optimum satisfaction for the worker.

The decision will be made by the Board officer generally after receiving medical advice and, if appropriate, input from an Occupational Hygiene Officer.

Where a worker prefers a binaural hearing aid, this will be provided by the Board if it is expected to meet her or his needs, and it will be provided whether the preference is based on performance expectations or is purely aesthetic.

Workers are advised not to make a private purchase of a hearing aid. Any such private purchase made will be at the worker's own expense.

A telephone amplifier may be provided for hearing-loss workers in cases where it is deemed appropriate.

### **#77.23      *Artificial Limbs***

Where an injury results in the loss of a hand, foot, arm, or leg, artificial limbs are supplied and kept in repair and replaced as needed. Wherever possible, prosthetic and orthotic supplies should only be requisitioned from facilities which have registered prosthetists and orthotists on their staff.

In all cases of major amputations, early referral to the Board's Rehabilitation Centre in Richmond is desirable (if there are no complications, as soon as the suture line has healed). A prosthesis will be supplied while at the Rehabilitation Centre, where ample time will be allowed for training in its use and for necessary adjustments while under observation.

Workers receiving artificial limbs are also entitled to the clothing allowance referred to in policy item #79.00.

#### **#77.24      *Medical Equipment***

Crutches or canes are covered where required as a result of the compensable condition.

Wheelchairs are issued to those workers who are permanently disabled and unable to walk. A wheelchair may be replaced when no longer serviceable, but necessary repairs may be authorized periodically during the life of the chair.

#### **#77.25      *Boots and Shoes***

Special footwear will be provided when:

1.      there is a permanent deformity of the foot as a result of a compensable injury and standard footwear cannot be adequately adapted;
2.      special footwear is required during rehabilitation or treatment for a temporary disability. This may include outside shoes required as a temporary measure.

Alterations to a worker's own boots and shoes, such as metatarsal bars, heel and sole raises, and arch supports, will be provided as a temporary measure, or on a permanent basis where necessary. The Board may request to examine footwear.

Where a worker is receiving physiotherapy from a private clinic and it is necessary to purchase running shoes, the Board will reimburse the cost up to \$25.00.

#### **#77.26      *Belts and Braces***

Should the worker's injury necessitate the wearing of a back belt, spinal or leg braces, splints or elastic stockings, these are supplied. This may be on one occasion only to enable the patient to overcome the effects of the injury, or in the case of permanent disability, it would be kept in repair and replaced as required.

The clothing allowance referred to in policy item #79.00 is payable to workers who have to wear a leg brace.

### **#77.27**      *Home and Vehicle Modifications*

With respect to major home and vehicle modifications required due to serious disabilities, the Board officer in Vocational Rehabilitation Services investigates the need for these modifications. Where the renovations or modifications are for vocational purposes, they are considered as a rehabilitation expense. (See policy item #90.00.) Where they are necessary for normal daily living because of the compensable medical condition, they are considered a health care benefit expense.

Examples of home modifications are ramps, elevators, wheel-in showers, grab-bars, doorway widening and wing taps for sinks.

Examples of vehicle modifications are hand controls and van lifts.

Necessary maintenance of the home or vehicle modification where required for medical purposes is also covered.

### **#77.28**      *Medical Supplies for Paraplegics and Quadriplegics*

The Board supplies paraplegics and quadriplegics with all necessary medical supplies pertaining to their disability. These are obtained by contacting the Board's Special Care Services Department.

Where necessary, paraplegics and quadriplegics are provided with a range of medical equipment. Examples include hospital-type beds and mattresses, long leg braces, crutches, raised toilet seats, grab-bars, wheelchairs and commodes. The list includes the various items required to take care of bowel and bladder functions. Supplies also include condoms, tubing, darvol bags, suppositories and disposable gloves for example. Costs of water mattresses, waterbeds or alternating pressure pads are covered where needed to prevent skin breakdown or spasm.

### **#77.29**      *Miscellaneous Items*

Generally, an item of equipment designed as a medical appliance (for example, a wheelchair) is acceptable as a health care benefit expense if it is medically required because of the compensable condition. Periodically, however, the Board receives requests to provide equipment not normally considered a medical appliance. Examples are hair-pieces, computers, televisions and specialized sports equipment. Unless the equipment is for the purpose of providing medical treatment for the compensable condition, or the individual is otherwise unable to

carry out the normal functions of daily living and the equipment is designed for those reasons, it is not considered a health care benefit expense. In these circumstances, however, consideration may be given to providing such items as a rehabilitation expense.

## **#77.30 The Prescription of Narcotics and Other Drugs of Addiction**

The following policy applies:

1. Board responsibility for narcotic analgesics, hypnotic-sedatives and tranquilizers (see examples in Table 1) will be limited to a post-injury or post-surgery period of eight weeks. An extension of this eight-week period may be considered, however, where there are special or extenuating circumstances; for example, where a worker has received, or will receive, a permanent disability award and requires regular intermittent and limited narcotic preparation for the relief of pain.
2. If a Board officer or Payment officer continues to receive accounts for these drugs beyond the eight-week limit, the worker's claim will be referred by the Board officer to a Board Medical Advisor. The Board Medical Advisor will contact the attending physician by phone where possible, outline the details of this policy, and discuss any special or extenuating circumstances. The Board Medical Advisor will also discuss the use of acceptable therapeutic alternatives such as: N.S.A.I.D.'s, anti-depressives, T.N.S., biofeedback.

If necessary, an extension beyond eight weeks may be recommended by the Board Medical Advisor following this discussion.

3. The Board Medical Advisor's discussion and resulting recommendation will then be recorded on the worker's claim and referred to the Board officer.
4. The Board officer's decision will be communicated in writing to the worker with a copy to the attending physician.

### **Table 1**

#### **1. Analgesic Target Drugs**

- (a) Analgesic combinations containing 50 mg or more of Codeine
- (b) Pentazocine and combinations (Talwin®, Talwin Compound 50®)

- (c) Oxycodone and combinations (Percodan®, Percocet®, etc.)
- (d) Propoxyphene and combinations (Darvon N®, 642®, 692®, etc.)
- (e) Meperidine (oral) (Demerol®)
- (f) Barbiturate + A.S.A. + Codeine combinations (Fiorinal®, Anadol®, Phenaphen®)Anileridine (Leritine)
- (g) Morphine and M.S. Contin and M.O.S.
- (h) Hydromorphone (Dilaudid)

## **2. Sedative-Hypnotic Drugs**

- (a) Barbiturates
- (b) Meprobamate

## **3. Tranquilizers**

- (a) Diazepam
- (b) Chlordiazepoxide

# **#78.00 DIRECTION, SUPERVISION, AND CONTROL OF HEALTH CARE**

Health care furnished or provided shall at all times be subject to the direction, supervision, and control of the Board. (16)

It will be noticed that health care “is subject to” the direction, etc., not “under” the direction, etc. The Board has a choice, therefore, about the circumstances in which it will give direction.

## **#78.10 Direction, Supervision, and Control of Treatment**

All questions as to the necessity, character, and sufficiency of health care to be furnished shall be determined by the Board. (17)

A main purpose of the control of treatment by the Board is to ensure that treatment is not overlooked, and that treatment choices are not overlooked. Much of the work takes the form not of “direction” or “control” but rather suggestions and advice to the attending physician. Insofar as the Board does exercise control, it relates largely to the approval or disapproval of payment for elective surgery. Sometimes, however, it may relate to other matters, such as a

direction that the patient be examined by a specialist, or that a particular institution be attended rather than another.

The Board uses its control over treatment to promote recovery, and to exclude choices by patients or doctors that will delay recovery, or create an unwarranted risk of further injury. But the control of treatment by the Board is not intended to exclude patient choices. If there are reasonable choices of treatment, or reasonable differences of opinion among the medical profession with regard to the preferable treatment, or choices to be made that depend on personal preferences, the matter should be regarded as one of patient choice.

Where a treatment or appliance is deemed reasonably necessary and more than one type is suitable, the choice is left to the treating practitioner and the worker. Where, however, the selection of a treatment or appliance will likely result in a significant increase in the length of disability, the Board will normally authorize the treatment or appliance that is the most likely to enable the worker to return to work at an early date. If there is a substantial difference in costs of equally effective treatments or appliances, the Board will authorize the less costly. In such cases, if the worker chooses the more costly option, the Board will cover costs up to the amount that would have been paid for the less costly, but equally effective, option.

Where coverage for a non-standard treatment program, medical appliance or other health care benefit expense is contemplated, prior approval of the Board is suggested. Either the health care professional or the worker may request this. Failure to do so may result in expenses being incurred that will not be covered by the Board.

Whether the treatment for a disability is an appropriate treatment for approval by the Board is a matter for decision by a Board Medical Advisor.

### *#78.11 Authorization of Elective Surgery*

Authorization must be obtained from the Board before carrying out any elective procedures. Authority may be obtained by telephone, FAX, or letter. The Board does not expect the practitioner working under emergency conditions to obtain prior authorization before performing necessary procedures.

A particular surgical treatment will not be refused simply on the ground of a personal preference for an alternative course of action; but it will be refused if it is felt unduly hazardous, having regard to its potential benefits and the risks involved in not having the surgery, or unlikely to promote recovery, or totally unnecessary, or if it would seem reasonable to try less drastic measures first.

The conclusion of the Board Medical Advisor on an application for approval of elective surgery is not limited to approval or disapproval. It may include taking

any other steps that the Board Medical Advisor considers would be sound medical practice. For example, if it should appear that the attending physician or the patient is expecting the operation to result in total recovery when it normally results in only limited improvement, the Board Medical Advisor may conclude that the operation should be approved, but that the matter should be discussed further with the treating doctor to try to ensure that the patient is informed of the likely results.

Where there is doubt about the existence of a disability, it is possible for the diagnosis of a Board Medical Advisor for treatment purposes to differ from the conclusions reached by the Board officer for claims purposes. In other words, it is a legal and logical possibility for the Board to conclude that a worker should be classified as a person having a particular disability for the purposes of compensation payments, but classified as a person not having that disability for the purposes of a particular remedial treatment. Suppose, for example, the claim is one for an internal disorder. Medical opinion is uncertain, but indicates about an equal probability that the worker has this disorder. Applying the terms of section 99 to the medical evidence, the correct conclusion, for claims adjudication purposes, may well be that the worker has a disorder, and is entitled to compensation. But if the attending physician is seeking approval of a high risk operation, then, depending on the other variables, the Board Medical Advisor might decide that the surgery should be refused on the grounds that the probability that the worker is suffering from that disorder is not sufficiently high to warrant the risks of that particular treatment.

In cases where authorization for treatment is not granted, the worker should be made aware of this decision in writing by the Board officer with a copy to the attending physician and specialist. The Board officer must have this letter reviewed by the Medical Advisor to ensure the medical content is correct. An explanation of the decision should be given so that the worker can make informed decisions about the treatment or its relationship to the injury. The Board Medical Advisor will, except in rare circumstances, discuss this decision in advance with the treating physician or specialist.

If a worker acted reasonably in undergoing unauthorized treatment, compensation will be paid to him or her for the consequences of that treatment. The claim of the attending physician or specialist for payment of the cost of the treatment is, however, determinable by different criteria. The Board may not meet the cost of treatment after authorization for it has been refused. (18) This would depend largely on the degree to which the doctor was aware of the Board's position.

## **#78.12**      *Worker Engages in Insanitary or Injurious Practices*

Section 57(2) provides in part that "The Board may reduce or suspend compensation when the worker

- (a) persists in insanitary or injurious practices which tend to imperil or retard his or her recovery; . . .”

The following principles are observed in applying this provision:

1. The worker must be made aware that the practice is deemed insanitary or injurious, that it must be discontinued, and that benefits will be reduced or suspended if she or he persists in the practice after that warning.
2. It will not be necessary in all cases for the Board officer imposing the suspension to do so only after securing medical advice to the effect that the practice is indeed insanitary or injurious. To take an extreme example, should a Board officer observe a worker with a broken leg in a cast attempting to remove the cast because it is uncomfortable, it will be obvious to the Board officer, although a layperson, that the practice is not conducive to recovery and should be discontinued. On the other hand, in any situation where there is any room for doubt about the insanitary or injurious nature of the practice, it will be necessary for the Board officer to seek some medical advice before warning the worker against a continuation of the practice.
3. Should the practice come to the attention of a Board Medical Advisor in the course of an examination, the worker should be advised that the practice will retard recovery or tend to lead to further injury and should be discontinued, and that the Board officer will be so advised of this opinion. It will then be the responsibility of the Board officer to formally advise the worker that persisting in the practice will result in reduction or suspension of benefits.
4. Once benefits have been reduced or suspended, the worker will be advised that an assurance, acceptable to the Board officer, that the insanitary or injurious practice will not be repeated, will be sufficient for resumption of full benefits. Of course, should the worker persist in the practice after such assurance is given, benefits will once again be reduced or suspended forthwith and any further assurances will be received with considerable skepticism.

Section 57(2)(a) has no application where it is discovered after the fact that a worker has engaged in an insanitary or injurious activity, but that activity has now ceased. The section is intended as an inducement by workers to take more care in promoting their own recovery and, therefore, is only applicable where the activity in question is continuing. However, compensation may be denied without invoking this section if the insanitary or injurious conduct engaged in by a worker shows that the worker was not disabled during the period in question, or if the

evidence indicates that the disability was due to this conduct rather than to the original work injury.

### **#78.13**      *Worker Refuses to Submit to Medical Treatment*

A worker will not be forced to accept treatment the worker does not wish to receive nor treatment from a doctor against whom he or she has objection. However, section 57(2) provides that “The Board may reduce or suspend compensation when the worker

- (a) . . .
- (b) refuses to submit to medical or surgical treatment which the Board considers, based on expert medical or surgical advice, is reasonably essential to promote his or her recovery.”

The term “medical treatment” in this subsection is not limited to treatment performed by doctors. It includes, for example, therapy by paramedical personnel.

Decisions on whether compensation should be reduced or suspended under this subsection are made by the Board officer; but there must be an input of medical advice. Where a Board officer in Vocational Rehabilitation Services is working on the case, he or she must also be consulted.

Under subsection 2(b), there must be a clear medical opinion on file that the relevant treatment “is reasonably essential to promote his recovery”. There must be evidence that the worker has been offered that treatment and knows that it is considered by the Board reasonably essential to promote recovery. There must be evidence that the worker was in a position to make a choice, and refused the treatment. Also, the worker must be given a chance to explain before any decision is made.

Subsection 2(b) is not intended to exclude all patient choices, and even when the terms of the subsection are satisfied, the Board officer is not bound to reduce or suspend compensation benefits in every case. There is a discretion. For example, if the proposed treatment involves a significant risk of an adverse side-effect, or a questionable prospect of success, or is hazardous, the Board officer might well conclude that the refusal to undertake that treatment was reasonable.

### **#78.14**      *Acupuncture*

The Board does not generally accept responsibility for acupuncture. Any exception must be previously authorized. Even where an exception is allowed it is usually only for a short period of time and then only in conjunction with an

overall program for dealing permanently with the worker's problem such as is found at a pain clinic. The Board would not likely authorize the treatment where it was being carried out on a routine long-term basis. Where approval of acupuncture treatment is granted, the number of treatments allowed and the fees payable will be set. Requests for authorization of acupuncture treatment are initially referred by the Board officer to the Unit or Area Office Medical Advisor. The request should provide details such as the number of treatments, the cost and the expected benefits. Treatments that do not meet the above general criteria are usually denied at the unit or area office level.

## **#78.20 Examinations and Consultations**

Section 57(1) provides as follows:

The Board may require a worker who applies for or is in receipt of compensation . . . to be medically examined at a place reasonably convenient for the worker. If the worker fails to attend for the examination or obstructs the medical examiner, the worker's right to compensation is suspended until the examination has taken place, and no compensation is payable during the period of suspension.

The examination may be by the worker's own attending physician, a Board Medical Advisor/Consultant or an outside consultant. The worker will be notified in advance of the type of doctor or practitioner who will do the examination.

### **#78.21 *Examination at the Board***

A Board Medical Advisor does not arrange to examine a worker on his or her own initiative. If a request is received from an attending physician the Board officer is consulted before an examination is arranged.

In all cases, the attending physician will be notified by letter of the intention to bring the worker to the Board for an examination (or consultation with a specialist).

The attending physician will be notified by the Board officer of any claims decision following the examination, and any changes in the status of the claim, unless matters of internal administration only are involved. The Board Medical Advisor is responsible for notifying the attending physician of any medical matters that should be brought to the physician's attention following the examination.

## **#78.22**      *Consultation with Specialists*

In an accepted claim where treatment is continuing and no transportation costs for the worker are involved, no permission of the Board for a consultation is necessary. No consultation shall be charged to the Board unless the necessity for consultation in respect of the injured part has been shown on the referring doctor's reports.

Where transportation costs for the worker are involved, permission for the referral of a worker for consultation must be obtained from the Board.

Where the Board arranges a consultation with a specialist, the attending physician must be notified of the appointment. Where a Board Medical Advisor wishes to refer a worker to a consultant, it will, if practicable, first be discussed with the attending physician giving him or her an opportunity to express a preference as to the consultant.

When a consultation is authorized on an investigative basis for an opinion necessary for the adjudication or possible reopening of a claim, arrangements may be made for the examination of the worker at the Board prior to being seen by the specialist. This is at the discretion of the Board Medical Advisor. Where the validity of the claim has not yet been determined, it will be indicated to the specialist that no treatment or compensation benefits can be authorized until the decision has been made on the claim.

Board policy does not permit approval of surgery on an investigative basis. Investigative referrals for consultation or examination do not extend to invasive procedures that could result in a disability. Where surgery is being requested, and it is not felt the condition is a Board responsibility, the worker is advised that such surgery must be undertaken on a private-patient basis. The worker is also advised that the Board will be prepared to review the surgical report to determine whether any Board responsibility does exist.

When the opinion of a consultant is being sought, the Board officer and the Board Medical Advisor are required to detail exactly the relevant medical questions which must be specifically addressed by the consultant. The instructions to the consultant are in writing.

When a worker has been referred to a specialist at the request of the attending physician with reference to diagnosis or treatment, a copy of the specialist's report will be sent to the attending physician by the specialist or the Board Medical Advisor. Similarly, when the worker is referred by a Board Medical Advisor to a specialist with reference to diagnosis or treatment, a copy of the specialist's report will be sent to the attending physician.

Decisions taken with regard to appropriate action upon receipt of the consultant's report will be the responsibility of the Board Medical Advisor with respect to treatment issues, and the responsibility of the Board officer with respect to adjudication issues.

### **#78.23**      *Psychiatric Treatment and Consultation*

Where a psychiatric examination is being arranged, it will, in most cases, be on an investigative basis. Psychiatric treatment will not normally be authorized until a report has been received from the psychiatrist relating to diagnosis, etiology, treatment possibilities and prognosis.

### **#78.24**      *Failure to Attend, or Obstruction of, Examination*

Before compensation can be suspended under section 57(1) on the grounds of a failure to attend, or obstruction of, a medical examination, the following prerequisites must be satisfied:

1. There must be clear evidence that an appointment was made and that the date, time and place were communicated to the worker and that the worker did not advise, by letter or otherwise, that the arrangements for the examination were not convenient.
2. There must be clear evidence of obstruction.
3. The worker must be advised by the physician, in general terms, of the provisions of section 57(1) and that the obstructive behaviour will be reported to the Board officer.
4. Should the worker persist in refusing to be examined or in obstructing the examination, the attempt shall be concluded and the matter referred forthwith to the Board officer.
5. The Board officer must advise the worker, in person, by telephone, or in writing, of the intention to apply section 57(1), reasons for the intended action, and the worker must be given an opportunity to explain the refusal or obstruction.
6. Should an explanation not be forthcoming, or should it be deemed unsatisfactory by the Board officer, payment of benefits shall be suspended.
7. Should the worker not appear for the examination, the steps outlined in (5) and (6) above shall be undertaken.

8. Notice to the worker of the suspension of benefits shall include notice of an appointment for a further examination and should advise that, should the worker attend and be examined on that occasion, benefits will be reinstated, however, without retroactivity.

Where a permanent disability award is instituted, the retroactive date of the award should not automatically be the day following the date of wage-loss suspension. The effective date of the award must be the date when it is deemed the worker's condition has stabilized.

### **#78.30 Fees or Remuneration**

The Board may contract with physicians, nurses, or other persons authorized to treat human ailments, hospitals, and other institutions for any health care required, and to agree on a scale of fees or remuneration for that health care.  
(19)

The fees of health care professionals are normally governed by fee schedules approved by the Board. These may be fees negotiated specifically by the Board or the Board may have decided to adopt the fee schedule of another agency such as the Medical Services Commission. Where there is not an approved fee schedule, the treatment and the fees payable must be approved in advance by the Board.

The fees or remuneration for health care furnished shall not be more than would be properly and reasonably charged the worker if personally paying, and the amount shall be fixed and determined by the Board, and no action for an amount larger than that fixed by the Board shall lie in respect of health care benefits.  
(20) The doctor is not permitted to bill the worker for any balance of the account regarding a compensable condition which the Board has not agreed to pay. If the doctor does this, the Board reimburses the worker, but deducts the amount from any future account the doctor submits to the Board.

Information regarding the current fee schedules of the Board for the professions and other suppliers of goods and services can be obtained by applying to the Board.

### **#78.31 *Adjudication of Health Care Benefits Accounts***

All accounts submitted to the Board for services and goods provided for injured workers are audited by the Health Care Services Department of the Board to ensure compliance with the *Act* and the fee schedules, and to ensure that the services or goods are appropriate to the worker's condition.

Where it is determined that services or goods supplied to a worker are not related to a compensable condition, the supplier will be notified as soon as possible.

When a decision is made by a Board officer that a worker's ongoing problems are not considered compensable, this decision is conveyed in writing to all concerned, including individuals or facilities that submit treatment accounts.

Regardless of the timing of the decision letter and the receipt of accounts, no accounts are payable for treatments after the date the worker is no longer deemed to be suffering from a compensable condition.

For a variety of reasons, the Board may decide to limit medical treatment even though the worker's ongoing complaints are considered to be compensable; for example, a denial of concurrent treatment (policy item #74.60) or a denial of an extension of chiropractic treatment (policy item #74.21) or physiotherapy (policy item #75.12). When such limitations occur, the Board normally will pay accounts up to the date of the decision letter if the reports or accounts are submitted promptly and in good faith. If the practitioner, however, neglects to inform the Board of the treatment until some time after it is provided and by so doing delays the Board's decision, these accounts will not be paid.

All accounts should be submitted promptly at the conclusion of the transaction or treatment. Section 56(3) provides that "Unless the Board otherwise directs, an account for medical services or health care must not be paid if it is submitted later than 90 days from the date that

- (a) the last treatment was given; or
- (b) the physician or person furnishing the medical service was first aware that the Board may be liable for his or her services, whichever first occurs."

In applying this section, some degree of discretion is exercised. The general policy is that if a person has provided a medical service it should be paid for.

However, serious offenders may be notified of this requirement. If they continue their practice of late billing, their accounts may be rejected.

### **#78.32**      *Reversal of Decision on Review or Appeal*

Where a claim, previously allowed, has now been disallowed, the Board will not initiate any steps to recover health care benefit payments already made; but if the Board is offered reimbursement by any other agency, the offer will be accepted.

Where accounts are outstanding at the time when the disallow decision is made, or are received after the decision, those accounts will not be paid, and the people rendering the accounts will be advised to submit them elsewhere. In these circumstances, the Board only declines to pay accounts for treatment, etc. Fees for reporting to the Board are still payable; so are the fees for any examination of the patient undertaken at the request of the Board for adjudication purposes.

Where a claim, previously disallowed, is now allowed, the Board will not at its own initiative solicit accounts for health care rendered prior to the date when the claim is allowed; but if accounts are received in respect of health care already rendered in respect of the compensable injury, and the Review Division or the Workers' Compensation Appeal Tribunal decision does not deal with the question of entitlement to that health care, the accounts are adjudicated as if the claim had been accepted in the first instance. The Board officer has, however, a discretion to pay for medical treatment or procedures undergone by the worker in good faith on the advice of his or her practitioner, even though the treatment or procedures might not ordinarily be approved for the worker's condition. The Board will not, under this policy, pay for treatment modalities or diagnostic procedures not generally recognized by the Board.

A copy of the Review Division or Workers' Compensation Appeal Tribunal decision reversing the previous decision is sent to the attending physician.

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

### **#78.33**      *Form Fees*

Where a claim is disallowed or suspended, and accounts submitted for treatment are not being paid, a form fee is paid in respect to any medical reports submitted prior to the date of the decision to disallow or suspend the claim.

Where a claim is rejected, that is, where:

1. a self-employed worker has no personal optional protection; or
2. the worker was employed by an employer not covered under the *Act*; or
3. a report was submitted in error;

form fees are not normally payable. In the event of the unusual situation where a medical report had been requested by the Board and the claim is eventually rejected, the form fee will be paid.

## #79.00 CLOTHING ALLOWANCES

The clothing allowances set out below are payable to upper and lower limb amputees wearing prostheses, and to workers wearing a leg brace. (21) The amputation must be at or above the wrist, or at or above the ankle. Effective July 1, 1993, the allowance is also payable to a worker confined to a wheelchair, who is not otherwise entitled, at the same rate as is payable to a lower limb amputee.

The amounts of the clothing allowances are set out below:

	Single Upper Limb Amputee	Bilateral Upper Limb Amputee	Lower Limb Amputee or Requires a Leg Brace	Upper and Lower Limb Amputee
July 1, 2006 – June 30, 2007	\$284.35	\$570.09	\$570.09	\$854.53
July 1, 2007 – June 30, 2008	\$290.47	\$582.37	\$582.37	\$872.94

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

Effective January 1, 2008, the amounts of the clothing allowances will be adjusted on January 1<sup>st</sup> of each year. The Board determines the percentage change to be applied annually to these amounts by comparing the percentage change in the consumer price index for October of the previous year with the consumer price index for October of the year prior to the previous year.

Payment of the allowance is automatically made by virtue of the amputation. Proof is required neither of the wearing of the prosthesis or prostheses nor of the replacement, repair, or damage to clothing. Payment in the case of leg braces is contingent on the continued wearing of the apparatus.

Entitlement to this allowance commences as of the date of the amputation or the worker's commencing to use the brace or wheelchair. Payment is made by separate cheque on January 1<sup>st</sup> of each year. This is a full calendar year payment and covers the year of payment. The first payment is made on the January 1<sup>st</sup> following the initiation of pension payments and this first payment will include any retroactive entitlement for prior periods of disability not previously paid.

Payment of this clothing allowance is withheld while a worker is in prison. The amount withheld is paid to the worker on release if the period in prison was less than one year. If the period in prison is more than one year, the clothing allowance is not paid for each full year the worker was in prison.

**EFFECTIVE DATE:** October 1, 2007 – Revised to change the reference to the date of clothing allowance adjustments from July to January 1<sup>st</sup> of each year.

**APPLICATION:**

Applies on or after October 1, 2007

**#80.00 PERSONAL CARE EXPENSES OR ALLOWANCES**

In cases of major injuries, such as spinal cord injuries, resulting in paraplegia or quadriplegia, severe head injuries, hemiplegia, aphasia, near or total blindness, multiple amputations, or severe disability as a result of occupational diseases, the Board may pay certain personal care expenses. These expenses are in addition to wage-loss or permanent disability payments.

Personal care expenses may be paid when a seriously disabled person, though not confined to an institution, has very limited mobility or requires assistance in toilet functions, bathing, eating, or has other problems in caring for himself or herself, or needs assistance to a lesser or greater degree in daily living. Personal care expenses are payable at the discretion of the Board. An investigation is made of the circumstances of each case.

While aimed primarily at situations where there is severe permanent disability, in limited situations personal care expenses may also be paid in cases of severe temporary disability. Before making temporary payments, consideration is given to such factors as the worker's home and family situation, geographical location, the medical condition and other relevant difficulties.

In lieu of the actual personal care expenses incurred by the worker, the Board may pay a flat rate personal care allowance determined in accordance with the principles set out in policy item #80.10 and policy item #80.20 below.

The payment of personal care expenses or allowances will cease upon the death of the worker.

**#80.10 Levels of Personal Care Allowances**

There are five levels of personal care allowances:

**Level 1:** The worker has restricted mobility but can feed, partly cleanse and otherwise care for himself or herself but does need some assistance in acts of daily living.

Examples are:

Blindness or near blindness, multiple amputations at or above the wrist or ankle, aphasia, hemiplegia, or any permanent disability resulting in a loss of function of the limbs, but not to an extent that significantly impairs other body functions.

**Level 2:** Restricted mobility. Worker can feed, clothe and wash himself or herself but needs assistance in other aspects of personal care and acts of daily living.

This includes:

Paraplegia with bowel and bladder functions impaired.

**Level 3:** Restricted mobility. Worker needs ongoing assistance in washing, shaving, dressing, feeding, precautionary attention to skin care and ongoing assistance in daily living.

Examples are:

1. Severe head injury resulting in brain damage to the extent that the worker is not bedridden, but is dependent upon assistance and ongoing care.
2. Quadriplegia with impairment of bowel and bladder functions.

**Level 4:** Worker is almost totally immobile and requires extensive assistance in maintaining personal hygiene, precautionary attention to skin care and ongoing assistance in all phases of daily living.

Examples are:

High lesion quadriplegia or severe head injuries.

**Level 5:** The worker is totally immobile for all practical purposes and essentially requires assistance in all phases of personal hygiene, body functions and acts of daily living (quadriplegic, decerebrate and bedridden).

The determination of whether a personal care allowance is applicable and the appropriate level may include consideration of factors such as home and family situation, geographic location and other difficulties that may be encountered in relating to the worker's environment. Other medical conditions that may not be a direct result of the personal injury sustained may also be considered in the determination.

Personal care allowances may be adjusted up or down in the event that the circumstances following the original application substantially change.

## **#80.20 Amounts Payable at Each Level**

The amounts of personal care allowances are set out below:

	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Level 4</b>	<b>Level 5</b>
January 1, 2006 – December 31, 2006					
Daily Amount	\$14.59	\$24.87	\$36.99	\$47.89	\$59.06
Monthly Amount	\$439.31	\$768.59	\$1,110.14	\$1,439.41	\$1,769.08
January 1, 2007 – December 31, 2007					
Daily Amount	\$14.73	\$25.10	\$37.34	\$48.34	\$59.61
Monthly Amount	\$443.41	\$775.77	\$1,120.51	\$1,452.85	\$1,785.60

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

Effective June 30, 2002, the amounts of the personal care allowances will be adjusted on January 1 of each year. The percentage change in the consumer price index determined under section 25.2 of the *Act*, as described in policy item #51.20, will be used.

## **#80.30 Payment Procedure**

Where the Board is paying the worker's actual expenses, it may pay directly the account of a company registered to provide the required assistance. The Board does not pay a personal care allowance directly to an individual attendant.

In a case where the worker is receiving a flat rate allowance or has hired an individual attendant, the amount is paid directly to the worker if he or she is capable of money management.

Once approved, personal care allowances are normally paid monthly. The worker, or the person providing the care, is required to complete and sign the prescribed form and return it to the Board each month, or at such other intervals as may be determined by the Board.

## **#80.40 Worker Requires Institutional Care**

The payment of personal care expenses or allowances will be suspended if the worker is institutionalized for more than fourteen calendar days, but may be reinstated upon returning home.

If a worker is totally disabled and requires ongoing institutional care as a result, a flat rate personal care allowance will not be paid. The Board provides the cost of institutional care as part of the health care benefit program. If it appears that such a worker can be provided the same kind of nursing or custodial care outside

an institution, the Board may, as an alternative to paying personal care allowance, pay an amount calculated, at least in part, by reference to the cost of institutional care.

## **#81.00 INDEPENDENCE AND HOME MAINTENANCE ALLOWANCE**

Normally, most workers who are homeowners have the physical capacity to maintain their property in order to protect their investment in home and property. Such things as painting, repairing, landscaping, appliance repairs, renovations and the many other activities required to maintain the home are difficult or impossible for the disabled. The severely disabled worker is usually required to hire tradespersons or others to carry out these activities, thereby incurring additional costs for maintaining home and property.

Similarly, the disabled worker may not have the physical capacity to maintain and/or drive a car or to use public transportation, and is consequently required to hire taxis or other forms of transportation to enjoy a reasonable degree of independence.

In order to assist in these and similar kinds of expenses, the Board has established a category of assistance separate and distinct from personal care allowances, called the independence and home maintenance allowance. This allowance may be paid over and above any level of personal care allowance and is in addition to any wage-loss or permanent disability award benefits.

Effective September 1, 1992, the criteria for paying the independence and home maintenance allowance are as follows:

1. The worker must have sustained a permanent compensable disability which meets one of the following criteria:
  - (a) The disability measured using the physical-impairment method of assessment is equal to 75% of total or greater.
  - (b) The disability measured using the projected-loss-of-earnings method of assessment is equal to an equivalent of 75% of total or greater and it is concluded, after obtaining the advice of the Board officer in Vocational Rehabilitation Services, that the disability will prevent the worker from carrying out the activities covered by the allowance.
  - (c) The compensable disability is superimposed on another permanently disabling medical condition, whether compensable or not, and the combined disability meets (a) above or the Board grants a projected-loss-of-earnings

award which meets (b) above. Where the pre-existing disability is non-compensable, the compensable disability must be at least half the combined disability measured using the physical-impairment method of assessment and be a significant factor in the worker's inability to do the activities covered by the allowance.

2. The worker must maintain a home or live in rented accommodation. A worker who lives in a nursing hospital or extended care facility will not be eligible. Other accommodation may be approved if it can be concluded that the worker would have contributed to its maintenance had the disability not occurred.
3. If the worker is institutionalized in a hospital, nursing care facility or extended care facility, but the spouse and children continue to maintain the family home, the allowance may be paid to the spouse.
4. The allowance commences as of the date when the worker meets the criteria set out above and will be terminated upon the death of the worker or if the worker ceases to meet the above criteria. The allowance may be paid retroactively if time elapses between the date of the worker becoming eligible for the allowance and the date eligibility is determined. With regard to any period prior to September 1, 1992, no payment can be made unless the worker meets the criteria which existed prior to that date. (22)

The independence and home maintenance allowance is payable at the discretion of the Board. The circumstances surrounding each case will be reviewed by the Board officer in Vocational Rehabilitation Services who will provide a report and recommendations.

Once the allowance is approved, the worker or spouse is required to complete and sign the appropriate form and submit it each month, or at such other intervals as may be determined by the Board.

The amount of the independence and home maintenance allowance is set out below:

<b>Date</b>	<b>Monthly Amount</b>
January 1, 2006 – December 31, 2006	\$232.23
January 1, 2007 – December 31, 2007	\$234.40

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

Effective June 30, 2002, the amount of the independence and home maintenance allowance will be adjusted on January 1 of each year. The percentage change in the consumer price index determined under section 25.2 of the *Act*, as described in policy item #51.20, will be used.

The independence and home maintenance allowance is not retroactive to before June 13, 1980. However, if the worker meets the criteria for the allowance, the allowance is paid regardless of date of injury or permanent disability due to occupational disease.

## **#82.00      TRANSPORTATION ALLOWANCES**

Section 21(1) authorizes the Board to furnish or provide the injured worker with transportation it may deem reasonably necessary.

### **#82.10      Eligibility for Transportation**

Subject to the exceptions set out at the end of this item, return transportation expenses are normally reimbursed when:

1. A worker travels to a place of medical examination or treatment where the appointment has been previously approved by the Board or is subsequently paid for by the Board; or
2. A worker travels in connection with a vocational rehabilitation program where the travel is requested or approved as part of the program by the Board officer in Vocational Rehabilitation Services; or
3. A worker is at the time of injury working at a place other than his or her place of residence and wishes to transfer to the place of residence and the disability from the injury prevents the worker from using the mode of transportation which he or she ordinarily would have used to do this; or
4. A worker meets the criteria set out in policy item #100.12 or policy item #100.13 in connection with attendance at a claims or Review Division inquiry.

Transportation expenses are not normally paid in regard to:

1. Travel within the boundaries of a local bus service (including the area serviced by the Greater Vancouver Regional District transportation system) where the bus is a reasonable means of transportation for the worker.

2. The portion of any journey which takes place within a distance of 24 kilometres of the destination. This does not apply where the worker's condition is such as to require travel by:
  - (a) ambulance; or
  - (b) taxi, and the worker has received prior authorization for this from the Board.
3. The portion of any journey which takes place beyond the boundary of the province. This does not apply where the Board specifically requests the worker to attend a medical examination, or in certain situations specified in policy item #100.15 in relation to claims or Review Division inquiries.

The Board may be ordered by the Workers' Compensation Appeal Tribunal to pay certain expenses. Section 7 of the *Workers Compensation Act Appeal Regulation* (B.C. Reg. 321/2002) provides that the Board may be ordered by the Workers' Compensation Appeal Tribunal to reimburse a party to an appeal under Part 4 of the *Act* for the following kinds of expenses:

- expenses associated with attending an oral hearing or otherwise participating in a proceeding, if the party is required by the Workers' Compensation Appeal Tribunal to travel to the hearing or other proceeding; and
- expenses associated with obtaining or producing evidence submitted to the Workers' Compensation Appeal Tribunal; and
- expenses associated with attending an examination required under section 249(8) of the *Act*.

However, the Workers' Compensation Appeal Tribunal may not order the Board to reimburse a party's expenses where those expenses arise from a person representing the party or the attendance of a representative of the party at a hearing or other proceeding related to the appeal.

**EFFECTIVE DATE:** March 3, 2003 (as to references to the Review Division, the Workers' Compensation Appeal Tribunal and section 7 of the *Workers Compensation Act Appeal Regulation*)

**APPLICATION:** Not applicable.

### **#82.11**      *Worker Bypasses Nearby Medical Facilities*

Workers may, of their own accord, bypass adequate local treatment facilities to attend a practitioner of their own choice elsewhere. The *Act* allows freedom of

choice of physician or qualified practitioner by the injured worker. Obviously, there must be some limitation of the costs of such freedom. For example, a worker in Prince George could not reasonably insist that since the physician or qualified practitioner of her or his choice worked in Vancouver, there should, therefore, be reimbursement for transportation to and from Vancouver to seek this medical care.

If, however, necessary medical care is only available in a given centre, or the Board, acting on the advice of the health professional, refers a worker to another centre for medical care, the costs of transportation will be chargeable to the Accident Fund.

If a worker, by choice, bypasses adequate local treatment facilities, transportation costs will not be paid. Adequate treatment facilities in this case are defined as physicians or hospitals in all cases. Since all other “qualified practitioners” are limited in the types and extent of care they can offer, it would not be reasonable to prohibit a worker from bypassing one of those practitioners to get to the nearest hospital or doctor. On the other hand, it would be unreasonable to allow a worker to bypass a hospital or a doctor to go to a “qualified practitioner”. (23)

A worker may, following the injury, move his or her place of residence to another location and thereby incur increased transportation costs. This may or may not be because the worker was injured while working away from home. The Board will not normally pay the cost of the move from one place of residence to another. It will, however, pay normal transportation costs for travel from the place where the worker resides to a place of treatment or examination in the worker’s area of residence even though the worker’s choice of place of residence results in greater transportation costs. The Board will not pay for travel from the place of residence to a doctor in the worker’s former residence unless the worker’s condition requires treatment by that particular doctor.

## **#82.20 Amount of Reimbursement**

The principles set out below also apply with regard to expenses incurred in connection with a claims or Review Division inquiry.

The Board will pay the cost of public transportation where this is available and is a reasonable and normal means of travel for the journey to be made by the worker. Where the Board considers it advisable, a worker will be encouraged to travel by air and the Board will assume the cost of the air fare, together with the cost of transportation to and from airports. In situations where air travel is acceptable and the worker elects to use some alternative means, such as the use of a private car, only the most reasonable and economical public transportation cost, which is usually the bus fare, will be reimbursed. Where air travel is not practical, and not approved, only the bus fare will normally be

reimbursed irrespective of the method of travel utilized by the worker. The “bus fare” rate includes necessary meal costs and taxi costs to and from bus terminals.

Where public transportation is not reasonably available, the most economical method of transport that is reasonably available will be considered.

Taxi fares will be paid when medical reports indicate that the worker’s condition does not permit travel by public transportation. The worker must first obtain prior Board approval and will be required, if no voucher is provided, to obtain receipts from the taxi driver and submit the receipts for a refund.

Where there is no public transportation available, or it is deemed otherwise reasonable and acceptable for the worker to drive his or her own vehicle, an allowance of 28 cents per kilometre is paid, effective January 1, 1997, for journeys meeting the minimum kilometre limit set out in policy item #82.10.

It may, for example, be considered reasonable for a worker to drive his or her own vehicle where there is available public transport if the bus journey would involve multi bus transfers or coming by automobile would be acceptable where it permits the worker to put in half a day at work and still keep an appointment.

Parking fees are payable if parking charges are levied by the hospital or medical building where the worker is attending for treatment, but are only paid where approval has been given to pay a kilometre allowance.

The amount of the kilometre rate is set out below:

<b>Date</b>	<b>Amount Per Kilometre</b>
January 1, 2006 – December 31, 2006	34¢
January 1, 2007 – December 31, 2007	34¢

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

Effective June 30, 2002, the kilometre rate will be adjusted on January 1 of each year. The percentage change in the consumer price index determined under section 25.2 of the *Act*, as described in policy item #51.20, will be used. The result is rounded to the nearest cent.

Where a worker has voluntarily moved out of the province, eligible expenses are normally limited to what would be paid if the expenses were incurred in British Columbia. Where travel costs are being paid, the cost of travel back to British Columbia (usually the air fare) is prorated on a kilometre basis and the payment covers only the percentage of the travel occurring in British Columbia.

Parking fees may be payable where approval has been given to pay a kilometre/mileage allowance. Where a worker has to buy meals while engaged in a journey for which the Board is paying expenses, the Board will pay the rates set out in policy item #83.20.

Flat rate travel allowances to cover the cost of different forms of transportation from different starting points to different destinations may be established. This includes situations where part of the journey takes place outside the province.

These allowances should cover the normal cost of the journey in question including incidental costs such as parking, taxi, airports, and meals which will usually be incurred in the journey. The amount of the allowance may be paid to the worker in place of actual expenses.

The worker in receipt of a flat rate payment may request reimbursement of actual expenses if, because of exceptional circumstances, expenses are incurred which are significantly higher than the amount of the flat rate. These expenses would have to meet the normal criteria for payment set out in this part of the manual.

**EFFECTIVE DATE:** March 3, 2003 (as to reference to the Review Division)

**APPLICATION:** Not applicable.

## **#82.30 Manner of Payment**

Air travel is normally arranged through a travel agency used by the Board.

Travel arrangements may also be made by forwarding a cheque to the worker in advance of the scheduled trip. Normally, such advance payments will only be paid at the rate of the bus fare. In any exceptional situation where the cheque forwarded to the worker is to cover an air fare, but the worker elects to use other transportation that is less expensive, the Board will not ask for a refund of the difference in cost.

Where an advance payment has been made and the worker does not keep her or his appointment and another appointment cannot be arranged, the worker will be asked to return any transportation expenses that have been advanced. They will be treated as an overpayment. (24)

## **#82.40 Transportation Provided by the Employer**

Every employer shall, at its own expense, furnish to a worker injured in its employment, when necessary, immediate conveyance and transportation to a hospital, physician or qualified practitioner for initial treatment. (25) After such initial treatment, the Board provides any necessary transportation.

In the event a doctor is called to the scene of the accident, the employer shall be responsible for any charge made by the doctor with respect to mileage or travelling time. Where air transportation is utilized, stretchers suitable for use in planes shall be provided.

The transportation of an injured fisher to a hospital or physician or qualified practitioner is discussed in section 13 of the *Fishing Industry Regulations*.

**EFFECTIVE DATE:** March 18, 2003 (as to the deletion of reference to the *Workers' Compensation Reporter Decision No. 223*)  
**APPLICATION:** Not applicable.

## **#82.50 Flight Changes**

Because of advance bookings, flight reservations made by the Board are normally at a preferred rate.

A worker may change a flight reservation or elect to fly after having previously advised that he or she will use some other means of transportation. This may result in increased flight cost. The Board officer will investigate the reasons for the change. If the investigation establishes that the change was necessitated for some emergency or other unavoidable reason, the Board will pay the costs incurred. If, however, it is shown that the change was due to a personal choice or preference on the part of the worker, the worker will either not be entitled to reimbursement of the additional costs incurred or may be required to reimburse that amount to the Board. The latter may be accomplished through a deduction from future wage-loss entitlements.

Workers scheduled to travel by air are advised in advance of this policy.

## **#83.00 SUBSISTENCE ALLOWANCES**

The Board may make a daily allowance to an injured worker for subsistence when, under its direction, the worker is undergoing treatment at a place other than the place of residence. The power of the Board to make a daily allowance for subsistence extends to an injured worker who receives compensation, regardless of the date of first becoming entitled to compensation. (26)

### **#83.10 Eligibility for Subsistence**

Subsistence may be paid where a journey, for which the Board is paying transportation expenses (see policy item #82.10), requires the worker to spend one or more nights away from home. It may continue to be paid for the duration of a treatment or vocational rehabilitation program which has been approved by the Board, and which requires the worker to spend a period of time away from home.

In determining whether a journey or program requires a worker to stay from home overnight, regard will be had to whether the worker can travel from home and return daily for a cost less than the amount that would be paid for subsistence.

Unless maintaining a connection to a place other than where the Board has directed the worker to be, no subsistence payments will be made. Maintaining a connection means paying a significant amount of rent, mortgage, or other fee or cost that guarantees a place for the worker to live upon return.

Where a worker is maintaining a residence close to work and also has a residence in another place, subsistence will not be paid while receiving treatment in either place. This is so even though the employer provides an allowance to cover the cost of the residence close to the work place and this ceases while the worker is disabled. However, the amount of the allowance is treated as part of the worker's earnings for the purpose of computing wage-loss benefits. (27)

### **#83.11**      *Travelling Companions*

The following general rules will apply with regard to subsistence payments for travelling companions, attendants or visitors for injured workers. Reimbursement of costs for persons other than the worker does not include any wage or income loss incurred.

1. Where it is medically necessary, the Board officer will authorize subsistence for one night for a travelling companion to take a patient to a treatment centre, medical examination or meeting in any city where it is not reasonable to expect the travelling companion to return home that day. Another night may be allowed to accompany the patient home if he or she is required to stay more than one day at that centre and a travelling companion is medically necessary in the opinion of the Board officer. (In case of emergency, other designated Board officers may authorize travel and subsistence.) Where it is not necessary for the travelling companion to stay overnight, travel costs and appropriate meal allowances will be paid.
2. Where an injured worker is in critical condition in a hospital, a spouse, relative or other person from the worker's residence with a close attachment to the injured worker may receive transportation costs, subsistence payments as long as the worker remains in critical condition.
3. Where an injured worker has sustained a major amputation and the presence of a spouse or parent is deemed advisable, the spouse or parent may receive transportation costs or subsistence payments to

visit with the injured worker, during the early stages of treatment and the fitting of a prosthesis. The Board officer responsible for the claim approves these visits.

4. Where under Board sponsorship or direction a worker is undergoing a period of treatment or retraining which requires the worker to live elsewhere than her or his normal residence for a period of six weeks or more, the Board officer will, on not more than one occasion every three weeks pay for a visit home by the worker or, in lieu of this, authorize subsistence for up to two nights plus transportation costs for a spouse, relative or other person from the worker's residence with a close personal attachment to the worker visiting the worker. Where the trip involves travel outside of British Columbia, the Board will prorate the airfare on a mileage basis and only pay the portion from the British Columbia border. This proration may, at the discretion of a Director in the Rehabilitation and Compensation Services Division, be waived in the case of a spouse, relative or other person from the worker's residence with a close attachment to the injured worker who is visiting a worker in critical condition in a hospital. The payment of transportation costs includes the costs of meals where necessary. Any visit home not meeting the above criteria must be at the worker's own expense.
5. Where the Board officer feels that there are other circumstances where subsistence for a person with a close attachment to the injured worker is appropriate, one night may be allowed and the reason for so doing noted on the claim with a copy sent to a Director in the Compensation Services Division. Where a longer stay is felt to be appropriate, the Board officer may request subsistence from a Director in the Compensation Services Division. In these cases, the reasons and the claim should be forwarded for decision but this requirement may be dispensed with at the discretion of a Director in the Compensation Services Division.
6. Where a spouse attends a chronic pain clinic at which the worker is being treated, travelling expenses and subsistence allowances are payable.

The Board officer will normally accept the judgment of the attending physician as to whether a travelling companion should accompany the worker or whether the worker's condition is considered critical.

### **#83.12**      *Visits Home by Worker*

Where under Board sponsorship, a worker is undergoing a program of retraining away from her or his residence and the course of retraining is one of six weeks or more duration, the same provisions as listed in policy item #83.11, item 4 apply.

### **#83.13**      *Income Loss*

In situations where a worker who is not deemed disabled from working loses time from work to attend treatment or examination by a physician or qualified practitioner or for other authorized treatment, a payment through health care benefit funds can be made. These situations will either involve a worker who has never been declared disabled as the result of the injury or occupational disease, or has returned to work following a period of disability, but is still undergoing treatment. The payment is normally equal to 90% of the worker's actual current loss. However, it is subject to the same rules as to the maximum and minimum as are applicable to temporary total disability benefits. (See policy item #34.20 and policy item #69.00.)

Such payments are made where it is deemed unreasonable for the worker to attend for the examination(s) or treatment(s) outside of working hours. Generally, there will be no reimbursement if the loss incurred is under two hours, however, multiple losses, which in the aggregate accumulate to a significant loss, may qualify for payment. While these payments are not wage-loss compensation, the provisions of section 5(2) of the *Act* will be followed.

As such, no income-loss subsistence will be paid for losses incurred on the day of the injury.

If a loss is due either to the worker's personal selection of a physician or qualified practitioner which involves bypassing closer treatment facilities, this will be taken into account when evaluating an entitlement to income-loss subsistence.

In situations where the worker is maintained on full salary by the employer and an entitlement to income-loss subsistence has accrued, the payment will be made to the employer under the terms of section 34 of the *Act*.

### **#83.20**      **Rates of Subsistence**

"Subsistence" means the costs of accommodation and meals.

The Board will normally reimburse actual accommodation costs. When contacting the worker prior to departing from home, the Board officer will reach an agreement with the worker regarding the accommodation to be selected and the amount the Board is prepared to approve as a reimbursement.

In addition to accommodation costs, the worker will be paid a full or partial per diem meal allowance as follows:

<b>Date</b>	<b>Breakfast</b>	<b>Lunch</b>	<b>Dinner</b>	<b>Per Day</b>
January 1, 2006 – December 31, 2006	\$10.88	\$13.41	\$23.05	\$47.35
January 1, 2007 – December 31, 2007	\$10.98	\$13.54	\$23.27	\$47.79

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

The above meal rates also apply where a worker has to buy meals while engaged on a journey for which the Board is paying expenses.

Where board and/or room is included in a treatment or vocational rehabilitation program, it will be paid at cost.

The meal allowance will be adjusted on January 1 of each year.

Effective June 30, 2002, the percentage change in the consumer price index determined under section 25.2 of the *Act*, as described in policy item #51.20, will be used.

The rules set out above apply equally to family members or other persons travelling with or visiting an injured worker.

## **#84.20 Right of Eligible Workers to Choose Own Accommodation**

Patients are allowed a free choice as to whether they wish to stay at accommodations paid for by the Board or stay elsewhere. Where it is the opinion of the treating doctor that residence elsewhere would be detrimental to the health of the patient, the patient will be advised to stay at the accommodations paid for by the Board and be informed of the medical opinion. But the patient will still be allowed the choice.

Patients who live outside the Lower Mainland area, but within the Fraser Valley, who come to the Rehabilitation Centre for treatment daily, will be offered accommodation. If they elect not to accept that accommodation, they will be offered their actual travel expenses up to a maximum equal to the rate of subsistence payable under policy item #83.20 to a worker who is eligible for paid accommodation but chooses not to do so. The use of automobiles will be permitted where it is unreasonable to expect the patient to use public transport.

Patients are not allowed to park campers or trailers on the Board's premises while attending the Rehabilitation Centre for the purpose of accommodating themselves or their families. The vehicle should be parked at a recognized trailer

park and the worker will receive the appropriate subsistence allowance if he or she chooses to live there.

## **#84A.00    HOMEMAKERS SERVICES**

The Board provides homemakers' services for cases involving a single parent or, in families with two parents, when one parent is incapable of maintaining the home and family due to illness or other reasons.

Normally, in such circumstances, arrangements have been made by the worker to look after home and family with live-in housekeepers/babysitters, daycare centres or other family or community resources while the worker is away on the job. It is assumed that the same or similar arrangements would continue as an ongoing personal responsibility even though the worker is attending treatment for an industrial injury or undergoing a vocational rehabilitation program rather than being at work.

Homemakers' services may also be provided to workers where the seriousness of the injury would otherwise require hospitalization.

The Board does, however, recognize cases in which the provision of homemakers' services on a temporary basis should be considered, particularly in instances where a worker is away overnight. The Board will pay for such services under appropriate circumstance.

The criteria for the payment of a homemakers' service will be:

1. no suitable arrangements can be made with the family, friends, or through the use of community resources;
2. the decision for treatment outside the worker's home environment should be a decision with which the Board is in agreement;
3. the rates paid for such service will not be in excess of reasonable community rates; and
4. in cases of emergency when the spouse escorts a seriously injured worker who must be transported immediately to another health care facility, thereby leaving the home and family unattended.

Homemakers' services are considered a health care benefit expense where the costs incurred are the result of treatment. Where the homemakers' services relate to a vocational rehabilitation program, the costs will be part of Vocational Rehabilitation Services. In all cases, the Board officer in Vocational Rehabilitation Services is responsible for the investigation of the worker's circumstances and ongoing monitoring.

The allowance will normally be paid to the worker.

## NOTES

- (1) S.6(1); See policy item #26.30
- ~~(2) See policy item #75.11 DELETED~~
- (3) See policy item #78.22
- (4) S.1
- (5) S.56; See policy item #95.00
- (6) S.56(2); See policy item #78.00
- (7) S.56(4)
- (8) S.21(2)
- (9) See policy item #78.20
- (10) See policy item #74.60
- (11) See policy item #77.00
- (12) See policy item #78.20
- ~~(13) See policy item #73.10 DELETED~~
- ~~(14) See Chapter 16 DELETED~~
- (15) S.21(9)
- (16) S.21(6)
- (17) S.21(6)
- (18) See policy item #22.11
- (19) S.21(6)
- (20) S.21(6)
- (21) See policy item #80.00
- (22) Decision 324
- (23) See policy item #74.00 for the difference between “physician” and “qualified practitioner”
- (24) See policy item #48.40
- (25) S.21(3)
- (26) S.21(1)
- (27) See policy item #68.22
- ~~(28) See policy item #84.10 DELETED~~
- ~~(29) See policy item #84.11 DELETED~~
- ~~(30) See policy item #83.11 DELETED~~



- (d) The *Rehabilitation Services & Claims Manual* Volume I and Volume II, except statements under the headings “Background” and “Practice” and explanatory material at the end of each Item appearing in the new manual format;
- (e) The *Classification and Rate List*, as approved annually by the Board of Directors;
- (f) *Workers’ Compensation Reporter* Decisions No. 1 – 423 not retired prior to February 11, 2003; and
- (g) Policy decisions of the former Governors and the former Panel of Administrators still in effect immediately before February 11, 2003.

After February 11, 2003, the policies of the Board of Directors consist of the documents listed above except for the Occupational Safety and Health Division *Policy and Procedure Manual* (which was retired effective December 31, 2003) and any *Workers’ Compensation Reporter* Decisions No. 1 – 423 which have been retired since February 11, 2003. Policies of the Board of Directors also include amendments to policy in the policy manuals, any new or replacement manuals issued by the Board of Directors, any documents published by the Board that are adopted by the Board of Directors as policies of the Board of Directors, and all decisions of the Board of Directors declared to be policy decisions.

In the event of a conflict between policy in a manual identified in (a), (b), (c), or (d) above, and policy in *Workers’ Compensation Reporter* Decisions No. 1-423, policy in the manual is paramount.

In the event of any other conflict between policies of the Board of Directors:

- (a) if the policies were approved by the Board of Directors on the same date, the policy most consistent with the *Act* or Regulations is paramount.
- (b) if the policies were approved on different dates, the most recently approved policy is paramount.

The policies of the Board of Directors are published in print. The policies may also be published through an accessible electronic medium or in some other fashion that allows the public easy access to the policies of the Board of Directors.

The Chair of the Board of Directors supervises the publication of the *Workers’ Compensation Reporter*. It will include decisions of the Board of Directors and selected decisions of WCAT. It may also include key decisions of the Courts on matters affecting the interpretation and administration of the *Act* or other matters of interest to the community.

WCAT decisions do not become policy of the Board of Directors by virtue of having been published in the *Workers’ Compensation Reporter*. WCAT

decisions are published in the *Reporter* to provide guidance on the interpretation of the *Act*, the Regulations and Board policies, practices and procedures.

**EFFECTIVE DATE:** March 3, 2003 (as to deletion of references to how policy is to be applied)

**APPLICATION:** Not applicable.

## **#96.20 Board Officers**

A Board officer determines whether compensation is payable. They will decide, for instance, whether a worker was employed in an industry under Part 1 of the *Act*, whether a personal injury was suffered arising out of and in the course of employment, or whether the worker is suffering from an occupational disease which is due to the nature of the employment.

Following acceptance of a claim, the Board officer determines the amount and duration of compensation to be paid for temporary disability.

In a case of death, the Board officer decides whether the death is compensable and whether the members of the worker's family are dependants and entitled to compensation.

The term "compensation" includes, among other things, health care benefits, transportation and subsistence.

The Board officer determines when temporary total disability or temporary partial disability benefits are concluded, and whether an actual or potential permanent disability is accepted on the claim. These decisions are generally made on the basis of information supplied by a treating physician, qualified practitioner, consulting specialist and/or the injured worker. Treating physicians and qualified practitioners are required to send periodic reports to the Board outlining the worker's condition and restrictions.

A decision is provided to the worker, setting out whether an actual or potential permanent disability is accepted on the claim.

If an actual or potential permanent disability is accepted on the claim, the Board officer will refer the file to the Disability Awards Department for assessment. As part of the referral, the claim file will clearly indicate the status of the claim and confirmation of what permanent conditions have been accepted.

If the Board officer determines that there is no actual or potential permanent disability, the worker may request a review of the decision.

**EFFECTIVE DATE:** October 1, 2007 – Revised to delete references to memos and memorandums.

**HISTORY:** July 2, 2004 – Revisions to the role of Board officers and removal of criterion on a worker's self-referral to Disability Awards applied to all decisions, including appellate decisions, made on or after July 2, 2004.

**APPLICATION:** Applies on or after October 1, 2007

### **#96.21** *Preliminary Determinations*

A preliminary determination on a claim will be made, to provide temporary financial relief to the worker until the Board receives the information necessary to make a decision on the validity of the claim, when the following conditions are present:

1. The worker appears to be currently disabled from work.
2. On the available evidence, it appears probable that the worker is suffering from a compensable injury or occupational disease, or at least it appears that the evidence is evenly weighted.
3. There is some significant delay in obtaining evidence necessary to arrive at a conclusion on the validity of the claim, and the Board officer is unable to avoid that delay.
4. The worker is not causing the delay.
5. The delay appears to be causing an interruption of income for the worker. For example, the case is not one in which the worker is still being paid by the employer or another source.
6. The claim is not a third party one. (19)
7. An application for compensation has been received.

The above criteria apply whether or not the claim is protested by the employer.

When a preliminary determination is made, the following rules will apply:

1. Wage-loss benefits will be commenced, with an explanation to the worker, employer and attending physician.
2. Payments of wage-loss benefits under the preliminary determination will commence as of the date when the Board officer makes the determination. Arrears of wage-loss benefits for any time period prior to that date will not be paid until a decision on the validity of the claim is made, except that the Board officer may pay

such arrears on a preliminary determination to the extent that this may be necessary to avoid hardship.

3. The Board officer will proceed to obtain the evidence necessary to reach a decision on the claim as soon as possible.
4. Health care benefit bills will not be paid under a preliminary determination. Where a preliminary determination has been made on a claim and there has been a request for surgery, it will be handled in the same manner as with other claims that have yet to be formally adjudicated. In such cases, the patient and physician should proceed privately, pending a decision on the claim. This principle also applies with respect to other medical referrals, with the exception of a consultation with a specialist that may be paid on an investigation basis.
5. Where a preliminary determination has been made on a claim and wage loss payments have commenced, and subsequently a decision is made to disallow the claim, then:
  - (a) no recovery of the payments will be made in the absence of fraud or misrepresentation;
  - (b) the employer's sector or rate group will be relieved of the cost of any unrecovered payments pursuant to policy item #113.10.

The above rules governing preliminary determinations apply to applications to reopen a previous claim as well as applications commencing new claims.

A preliminary determination made in accordance with this policy is not a "decision" for the purposes of section 96(5). Rather, it is a Board administrative action that is intended to provide temporary financial relief to the worker until the Board receives the information required in order to make a decision on the validity of a claim. However, once the Board receives the required information and makes a decision, that decision is subject to the provisions of section 96(5).

**EFFECTIVE DATE:** March 3, 2003

**APPLICATION:** To all preliminary determinations made on or after the effective date.

## **#96.22**      *Suspension of Claim*

Where a report is submitted to the Board simply for the record, and where the worker did not receive medical treatment or was not disabled from work, or no other costs were incurred, no adjudication is necessary and the file will simply be marked "nothing to consider".

Where information necessary to the adjudication of a claim can only be provided by the worker, and the worker ignores a request for that information, refuses to provide it or hampers the investigation, the claim may be suspended (see policy item #93.26 regarding a worker's obligation to provide information).

Where a claim file is opened, and it is later established that the claim will be fully administered and paid by another Board under the terms of the Interjurisdictional Agreement, the British Columbia file will be placed in suspense. (20)

Wage-loss benefits may also be suspended in the following situations:

- (1) where the worker leaves the province without notifying the Board or receiving prior consent from the Board; (21)
- (2) where the worker is being paid full salary by the Federal Government; (22)
- (3) where the worker refuses to accept the cheques;
- (4) where a worker moves and the worker's whereabouts are unknown.

Where a claim has been suspended, all parties are notified of this fact and of the reasons for it. This includes any party from whom an account has been received. When the information required has been received or any other ground which gave rise to the suspension has been removed, the suspension will be lifted. In that event, the parties involved will again be notified.

### **#96.30 Board Officers in Disability Awards**

Where the Board officer has accepted an actual or potential permanent disability, Board officers in Disability Awards then decide the extent of the disability and calculate the worker's permanent disability award entitlement. Board officers in Disability Awards must accept the final decision of the Board officer as to what conditions are accepted under the claim.

In cases of minor disabilities, the Board Officer in Disability Awards may calculate the award without the benefit of a medical examination if this is considered unnecessary having regard to the medical evidence already on the claim. Except for those cases, the normal practice is for a section 23(1) assessment to be conducted for disability awards purposes by a Disability Awards Medical Advisor or an authorized External Service Provider (see policy item #39.01)

Although the evaluation is not the only medical evidence that the Board officer in Disability Awards may use, it will usually be the primary input.

The decision-making procedure for assessing entitlement to a permanent disability award for psychological impairment is discussed in policy item #39.01.

In those cases where the worker has a section 23(1) assessment, the Board officer in Disability Awards is required to notify the worker indicating the results of the evaluation and the conclusions reached regarding the question of permanent disability award entitlement.

The final decision on the assessment of a permanent disability award under section 23(3) is made by the Disability Awards Committee which consists of one senior representative from the Disability Awards, Medical, and Vocational Rehabilitation Services Departments.

Requests for the commutation of permanent disability awards are adjudicated in the first instance by Board officers in Disability Awards. Before making a decision, they may ask the Vocational Rehabilitation Consultant to contact the worker and obtain the necessary information.

**EFFECTIVE DATE:** October 1, 2007 – Revised to delete references to memos and memorandums.

**HISTORY:** July 2, 2004 – Revisions to the role of Board officers applied to all decisions, including appellate decisions, made on or after July 2, 2004.

**APPLICATION:** Applies on or after October 1, 2007