



WORKERS' COMPENSATION BOARD OF BC

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Update 2004 – 5

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

This update of the *Rehabilitation Services & Claims Manual* contains amendments to the *Manual* implemented since update 2004 – 4.

This amendment includes:

- Chapter 1 Addendum
- policy item #22.22, *Suicide*
- policy item #96.20, *Board Officers*
- policy item #96.30, *Disability Awards Officers and Adjudicators in Disability Awards*

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

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

Margaret Eckenfelder  
Vice-President  
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Attachments

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

**SUMMARY OF AMENDMENTS – Update 2004 – 5**

Chapter 1 Addendum	Pages 13 – 15	Updated.
Chapter 3	Pages 57 to 58	Policy item #22.22. Typographical correction to re-insert two lines missing from the policy.
Chapter 12	Pages 21 to 26	Policy items #96.20 and #96.30

Subject	Policy or Item #	Comments
Disablement Caused by Surgery	#22.11	For all decisions, including appellate decisions, on or after February 1, 2004 refer to policy item #22.11 of Volume II of this <i>Manual</i> regardless of the date of the original work injury or the further injury.
Travelling To and From Treatment	#22.15	For all decisions, including appellate decisions, on or after February 1, 2004 refer to policy item #22.15 of Volume II of this <i>Manual</i> regardless of the date of the original work injury or the further injury.
Activities on Board Premises or at Other Premises under Board Sponsorship	#22.21	For all decisions, including appellate decisions, on or after February 1, 2004 refer to policy item #22.21 of Volume II of this <i>Manual</i> regardless of the date of the original work injury or the further injury.
Injury Caused by Worker or Employer	#111.10	For all decisions, including appellate decisions, on or after February 1, 2004 refer to policy item #111.10 of Volume II of this <i>Manual</i> regardless of the date of the original work injury or the further injury.
Schedule B Presumption	#26.21	For all decisions, including appellate decisions, made on or after June 1, 2004.  See <a href="#">resolution 2004/05/18-02</a> if more information is required.
Herniae	#15.50	For all decisions, including appellate decisions, made on or after June 1, 2004, please refer to policy item #15.50, Herniae, in Volume II of the <i>Manual</i> .  See <a href="#">resolution 2004/05/18-03</a> if more information is required.

Subject	Policy or Item #	Comments
Board Officers	#96.20	<p>For all decisions, including appellate decisions, made on or after July 2, 2004, please refer to policy item #96.20, <i>Board Officers</i>, in Volume II of this <i>Manual</i>.</p> <p>See <u>resolution 2004/06/22-03</u> if more information is required.</p>
Disability Awards Officers and Adjudicators in Disability Awards	#96.30	<p>For all decisions, including appellate decisions, made on or after July 2, 2004, please refer to policy item #96.30, <i>Board Officers in Disability Awards</i>, in Volume II of this <i>Manual</i>.</p> <p>See <u>resolution 2004/06/22-03</u> if more information is required.</p>

# NOTES

- (1) Chapter 2
- (2) Chapter 8
- (3) Chapter 3
- (4) Chapter 4
- (5) Chapters 3 and 4
- (6) Chapter 3
- (7) Chapter 5
- (8) Chapter 6
- (9) Chapter 8
- (10) Chapter 10
- (11) Chapter 11
- (12) Chapter 17
- (13) S.1 S.80
- (14) S.1
- ~~(15) S.81 Deleted~~
- ~~(16) S.82 Deleted~~
- (17) S.96(1)
- ~~(18) Chapter 12 Deleted~~
- ~~(19) Chapter 13 Deleted~~



## **#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 claimant is still recovering from a previous work injury, the principles set out in #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)

**EFFECTIVE DATE:** For all decisions, including appellate decisions, on or after February 1, 2004 refer to policy item #22.21 of Volume II of this *Manual* 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 claimant, 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 claimant 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 claimant 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>EFFECTIVE DATE:</b>	February 11, 2003 (as to references to Board of Directors policies) March 3, 2003 (as to deletion of references to how policy is to be applied)
<b>APPLICATION:</b>	Not applicable.

## **#96.20 Board Officers**

For all decisions, including appellate decisions, made on or after July 2, 2004, please refer to policy item #96.20, *Board Officers*, in Volume II of the *RS&CM*.

A Board officer determines whether compensation is payable. They will decide, for instance, whether a claimant 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 claimant 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.

It is the responsibility of Board officers to determine whether a worker's claim should be referred to the Disability Awards Department for review and possible pension evaluation. This decision is generally made on the basis of information supplied by a treating physician, qualified practitioner, consulting specialist or the injured worker. Treating physicians and qualified practitioners are required to send periodic reports to the Board outlining the worker's condition. These reports include a question which asks specifically whether there will be any permanent disability resulting from the injury.

To ensure consistent referrals of all cases where there is a potential permanent disability, the Board officer is required to refer the claim to the Disability Awards Department for further evaluation where any of the following guidelines apply:

1. Where a medical report indicates that a permanent disability exists or that there is a possibility a permanent disability exists.
2. Where a worker indicates there is a permanent disability as a result of the compensable injury, or states there is an inability to return to employment as a consequence of the injury.
3. Where there is any other indication of a permanent disability or potential permanent disability.

If there is any doubt about the existence of a permanent disability, these claims are referred to the Disability Awards Department for final consideration. Board officers, however, are expected to exercise discretion and common sense in deciding whether to refer a worker's claim to the Disability Awards Department. Once a decision is made to refer a claim to the Disability Awards Department, it is up to the Board officer to clearly delineate by memo the status of the claim and to confirm what conditions have been accepted.

**EFFECTIVE DATE:** July 2, 2004  
**APPLICATION:** For all decisions, including appellate decisions, made on or after July 2, 2004, please refer to policy item #96.20, *Board Officers*, in Volume II of the *RS&CM*.  
**HISTORY:** March 3, 2003 - deletion of statements regarding the return of receipts for particular items that do not qualify for payment on a claim, and housekeeping changes.

#### *#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. (23)
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 the 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 claim will be accepted for information purposes only.

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.

Where a claim 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 claim will be placed in suspense. (24)

Wage-loss benefits may also be suspended in the following situations:

1. where the claimant leaves the province without notifying the Board or receiving prior consent from the Board; (25)
2. where the claimant is being paid full salary by the Federal Government; (26)
3. where the claimant 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.

## *#96.23 Withholding Wage-loss Benefits Pending Investigation*

Once the Board has made an initial decision to accept a claim and pay wage-loss benefits, these benefits are usually paid on a regular basis for as long as the Board continues to receive medical reports showing disability. Furthermore, benefits will not be suspended simply because of a lack of medical reports. Although it is the responsibility of the worker to seek required medical attention so that the necessary ongoing proof of disability can be submitted by her or his doctor, it is not the responsibility of the worker to procure these reports. While the worker's assistance is often requested, the final responsibility for obtaining the reports rests with the Board.

The Board will use its best efforts to obtain necessary reports and carry out investigations as quickly as possible so that there is no delay in the payment of benefits. However, it may be that in some cases there will be delays where the necessary investigations cannot be carried out in time. The Board must be

satisfied before it makes any payment of wage loss that the requirements of the Act are met and may withhold benefits temporarily until it is able to satisfy itself of this. Even if there are medical reports on file indicating that the claimant is disabled, there may be other information indicating that this is not the case, for example, that he or she is working, which may require that benefits be withheld pending investigation. The highest priority is given to investigations which are causing a delay in benefits. The claimant is notified of any significant delays because of the need to carry out investigation.

### **#96.30 Disability Awards Officers and Adjudicators in Disability Awards**

For all decisions, including appellate decisions, made on or after July 2, 2004, please refer to policy item #96.30, *Board Officers in Disability Awards*, in Volume II of the *RS&CM*.

Disability Awards Officers and Adjudicators in Disability Awards determine whether a worker's injury or occupational disease has caused a permanent disability. They then decide the extent of the disability and calculate the worker's pension entitlement. Disability Awards Officers and Adjudicators in Disability Awards must accept the final decision of the Claims Adjudicator as to what conditions are accepted under the claim. The Claims Adjudicator is required to outline the decision in a memo when referring the claim to the Disability Awards Officer or Adjudicator in Disability Awards.

In cases of minor disabilities, the Disability Awards Officer or Adjudicator 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 permanent functional impairment evaluation to be conducted for disability awards purposes by a Disability Awards Medical Advisor or an authorized External Service Provider (see *Item #38.10*).

Although the evaluation is not the only medical evidence that the Disability Awards Officer or Adjudicator 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 #38.10

There may be cases where the Disability Awards Officer or Adjudicator in Disability Awards will be able to conclude from the information on the claim that there is no compensable permanent disability resulting from the injury.

Where, after reviewing a claim, the Disability Awards Officer or Adjudicator in Disability Awards decides there is no permanent disability, it is not necessary to inform the worker of this conclusion unless it is evident the worker has enquired about entitlement or expressed some expectations of receiving an award. The

above process is considered an extension of the referral initiated by the Claims Adjudicator or Claims Officer.

There are also borderline situations where the Disability Awards Officer or Adjudicator in Disability Awards may seek advice or clarification from the Disability Awards Medical Advisor concerning the question of potential disability. If, after this process, the Disability Awards Officer or Adjudicator in Disability Awards concludes that no disability is evident, it is not necessary to advise the worker of this conclusion, unless there has been a specific enquiry or it is evident that the worker has expectations of receiving an award.

However, in those cases where the worker has a permanent functional impairment evaluation, the Disability Awards Officer or Adjudicator in Disability Awards is required to notify the worker indicating the results of the evaluation and the conclusions reached regarding the question of pension entitlement.

The final decision on the assessment of a pension on a projected loss of earnings basis 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 pensions are adjudicated in the first instance by Adjudicators in Disability Awards. Before making a decision, they may ask the Rehabilitation Consultant to contact the claimant and obtain the necessary information.

**EFFECTIVE DATE:** July 2, 2004  
**APPLICATION:** For all decisions, including appellate decisions, made on or after July 2, 2004, please refer to policy item #96.30, *Board Officers in Disability Awards*, in Volume II of the *RS&CM*.

## **#97.00 EVIDENCE**

Under the old English system, which was an adversary system of workers' compensation, there was a burden of proof imposed on the worker, but that is not the correct practice here. The Claims Adjudicator must not start with any presumption against the worker, but neither must there be any presumption in the worker's favour. The correct approach is to examine the evidence to see whether it is sufficiently complete and reliable to arrive at a sound conclusion with confidence. If not, the Adjudicator should consider what other evidence might be obtained, and must take the initiative in seeking further evidence. After that has been done, if, on weighing the available evidence, there is then a preponderance in favour of one view over the other, that is the conclusion that must be reached. But if it appears upon the weighing of the evidence that the disputed possibilities are evenly balanced then the rule comes into play which requires that the issue be resolved in accordance with that possibility which is favourable to the worker.