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**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

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Update 2006 – 4

**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 2006 – 3.

This update includes:

Amendment to policy item #1.03, *Scope of Volumes I and II in Relation to Benefits for Injured Workers*, effective August 1, 2006.

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 WorkSafeBC Customer Service at the following:

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Roberta Ellis  
Vice-President  
Policy and Research Division

Attachments

***August 2006***

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

**SUMMARY OF AMENDMENTS – Update 2006 – 4**

Chapter 1	Pages 1 to 6	Amendments made to policy item #1.03.
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# CHAPTER 1

## SCOPE OF VOLUME I OF THIS *MANUAL*

### #1.00 INTRODUCTION

In 2002, the *Workers Compensation Act* underwent significant legislative amendment. This resulted in the restructuring of the *Rehabilitation Services & Claims Manual* into two volumes - Volume I and Volume II. This policy sets out an overview of the legislative changes and explains how readers of this *Manual* can determine which volume is applicable to their particular circumstances.

#### #1.01 *Legislative Amendments*

- (a) *Workers Compensation Amendment Act, 2002* (“*Amendment Act, 2002*”)

The *Amendment Act, 2002* is also referred to as “Bill 49”. It primarily amended the *Workers Compensation Act*:

- effective June 30, 2002 in relation to benefits for injured workers (including the calculation of average net earnings, duration of temporary benefits, integration of CPP disability benefits, indexing of compensation benefits, worker obligations to provide information, mental stress and permanent disability awards); and
- effective January 2, 2003 in relation to the establishment of a new Board of Directors as the governing body of the Workers’ Compensation Board.

- (b) *Workers Compensation Amendment Act (No. 2), 2002* (“*Amendment Act (No. 2), 2002*”)

The *Amendment Act (No. 2), 2002* is also referred to as “Bill 63”. It primarily amended the *Workers Compensation Act* effective March 3, 2003 in relation to a new review/appeal structure and to the Board’s authority to reopen matters previously decided or to reconsider previous decisions.

## *#1.02 Scope of Volume I and Volume II of this Manual*

The *Rehabilitation Services & Claims Manual* was restructured into two volumes to facilitate the implementation of the new benefits policies resulting from the *Amendment Act, 2002*. The new policies were incorporated into Volume II, and the policies in place immediately prior to June 30, 2002 became Volume I. (For policies in effect prior to the Volume I policies, readers are referred to the Board's archives.)

Volume I and Volume II apply to different groups of injured workers. Whether the benefits for an injured worker are to be determined under Volume I or Volume II depends upon the transitional rules set out in policy item #1.03 below. It is the responsibility of decision-makers to determine whether Volume I or Volume II applies to each case before them.

Due to the fact that Volume I covers a finite group of injured workers, its relevance to the workers' compensation system will gradually decrease over time. It is anticipated that there will be very few future amendments to the policies in Volume I. Any major amendments will be listed, for convenience, in the Addendum to this chapter.

Volume II includes injuries occurring on or after June 30, 2002. Its relevance to the workers' compensation system will therefore continue over time. Volume II policies will be subject to amendment from time to time, in the same manner as policies in other policy manuals. Amendments to policies in Volume II will be archived in the Board's records and documented publicly.

## *#1.03 Scope of Volumes I and II in Relation to Benefits for Injured Workers*

### **(a) General**

Subject to subsequent amendments, Volume I sets out the law and policies that were in effect immediately prior to June 30, 2002 in relation to compensation for injured workers. For convenience, the law and policies in effect immediately prior to that date, as amended, will be called the "former provisions".

Volume II sets out the law and policies in effect on or after June 30, 2002, as they may be amended from time to time, in relation to worker benefits. For convenience, the law and policy on or after that date, including any subsequent amendments, will be called the "current provisions".

Except as otherwise stated and except in relation to matters covered by the *Amendment Act (No. 2), 2002*, in Volume I "*Act*" refers to the *Workers*

*Compensation Act*, as it read immediately before June 30, 2002. The *Interpretation Act*, RSBC 1996, Chapter 238, applies to the *Act*, unless a contrary intention appears in either the *Interpretation Act* or the *Act*.

**(b) Amendment Act, 2002 (Bill 49) Transitional Provisions**

The following rules apply to determining whether the former provisions (Volume I) or the current provisions (Volume II) apply in a particular case. These rules are based upon the transitional rules in section 35.1 of the *Workers Compensation Act*, as amended by the *Amendment Act, 2002*.

1. Except as noted in rules 3, 4, and 5, the former provisions apply to an injury that occurred before June 30, 2002.
2. The current provisions apply to an injury that occurs on or after June 30, 2002.
3. Subject to rule 4 respecting recurrences, if an injury occurred before June 30, 2002, but the first indication that it is permanently disabling occurs on or after June 30, 2002, the current provisions apply to the permanent disability award with two modifications:
  - (i) 75% of average earnings (former provisions) is used for calculating the award rather than 90% of average net earnings (current provisions); and
  - (ii) no deduction is made for disability benefits under the Canada Pension Plan (former provisions).

Under this rule, for an injury that occurred before June 30, 2002, where the first indication of permanent disability also occurs before June 30, 2002, the permanent disability award will be adjudicated under the former provisions. Where the first indication of permanent disability is on or after June 30, 2002, the award will be adjudicated under the current provisions, using the modified formula described in (i) and (ii) above. The determination of when permanent disability first occurs will be based on available medical evidence.

An example of when this rule applies is where a worker, injured before June 30, 2002, shows no signs of permanent disability before that date. However, on or after June 30, 2002, the worker has surgery, which first causes permanent disability. The permanent disability award will be adjudicated under the current provisions, using the modified formula.

4. If an injury occurred before June 30, 2002, and the disability recurs on or after June 30, 2002, the current provisions apply to the recurrence.

This transitional rule applies only to a recurrence of a disability on or after June 30, 2002. It does not apply to permanent changes in the nature and degree of a worker's permanent disability. Where a worker was entitled to a permanent disability award before June 30, 2002 in respect of a compensable injury or disease, the former provisions apply to any changes in the nature and degree of the worker's permanent disability after that date.

For the purposes of this policy, a recurrence includes any claim that is re-opened for an additional period of temporary disability, regardless of whether the worker had been entitled to a permanent disability award before June 30, 2002. However, where the worker was entitled to a permanent disability award before June 30, 2002, the former provisions apply to any changes in the nature and degree of the worker's permanent disability following an additional period of temporary disability.

The following are examples of a recurrence:

- A worker totally recovers from a temporary disability resulting in the termination of wage-loss payments. Subsequently, there is a recurrence of the disability and the claim is re-opened for compensation.
  - A worker is in receipt of a permanent partial disability award and the disability subsequently worsens so that the worker is temporarily totally disabled. The claim is re-opened to provide compensation for a new period of temporary disability. The additional period of temporary disability is a recurrence to which the current provisions apply. However, a subsequent change in the nature and degree of the worker's permanent disability is adjudicated under the former provisions.
5. Regardless of the date of injury or death, the current provisions on indexing apply to compensation paid on or after June 30, 2002. Indexing of retroactive awards payable before June 30, 2002, will be based on the former provisions.

**EFFECTIVE DATE:** August 1, 2006

**APPLICATION:** Amendments to policy item #1.03(b)(4) that took effect on August 1, 2006 apply to all decisions, including appellate decisions, made on or after October 16, 2002.

**HISTORY:**

June 17, 2003 – Reorganization of format and addition of content to address the scope of Volumes I and II of the Manual.

Amendments to transitional rule 4 in policy item #1.03(b) reflect the status quo by inserting the policy on the meaning of “recurrence” in section 35.1 of the *Act* that was previously approved effective October 16, 2002, and only inserted into Volume II.

**#1.10 The Persons Covered by the Act**

Not everyone is entitled to compensation under the *Act*, even if injured at work. To qualify for compensation, a person must be a "worker" employed by an employer covered by the *Act*. (1) Where a compensable injury or disease results in the worker's death, certain of the worker's relatives are entitled, but they must usually have been "dependants" during the worker's lifetime. (2)

**#1.20 The Conditions under which Compensation is Payable**

Not all injuries or diseases are compensable. The *Act* prescribes the type of injuries (3) and diseases (4) and the circumstances in which they are compensable. (5) Thus, for example, in the case of injuries, compensation is limited to personal injuries arising out of and in the course of employment. (6)

**#1.30 The Type and Amount of Compensation**

There are a variety of types of compensation provided under the *Act*:

1. payments to compensate the injured worker for loss of earnings caused by a temporary disability; (7)
2. permanent disability awards for actual or estimated loss of earnings; (8)
3. pensions to dependants for loss of support by a deceased worker; (9)
4. health care benefits; (10)
5. rehabilitation assistance. (11)

**#1.40 Charging of Claims Costs**

The cost of compensation is normally charged to the employer rate group to which the worker's employer belongs. The cost may also affect the employer's

experience rating. There are special provisions which relieve the rate group and/or the employer in certain situations. (12)

## **#2.00 WORKERS' COMPENSATION BOARD**

The Workers' Compensation Board is a corporation set up under the *Act* to administer the provisions of the *Act*. (13) The *Act* defines the word "Board" as the Workers' Compensation Board. (14) The use of the word "Board" throughout this *Manual* means the Workers' Compensation Board.

The Board of Directors of the Workers' Compensation Board sets and revises as necessary the policies of the Board, including policies respecting compensation, assessment, rehabilitation and occupational health and safety. The Board of Directors also sets and supervises the direction of the Board.

**EFFECTIVE DATE:** February 11, 2003 (as to deletion of references to the Appeal Division and the former Governors)

**APPLICATION:** Not applicable.

## **#2.10 Jurisdiction over Claims Adjudication**

The Board has exclusive jurisdiction to inquire into, hear, and determine all matters and questions of fact and law arising under the *Act*, and the action or decision of the Board thereon is final and conclusive and is not open to review in any Court. (17) Thus, the Board has sole jurisdiction over the adjudication of claims for compensation under the *Act*.

**EFFECTIVE DATE:** February 11, 2003 (as to deletion of references to the Appeal Division and the former Governors)

**APPLICATION:** Not applicable.

## **#2.20 Application Of The *Act* And Policies**

In making decisions, Board officers must take into consideration:

1. the relevant provision or provisions of the *Act*;
2. the relevant policy or policies in this *Manual*; and
3. all facts and circumstances relevant to the case.

By applying the relevant provisions of the *Act* and the relevant policies, Board officers ensure that:

1. similar cases are adjudicated in a similar manner;