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WORKING TO MAKE A DIFFERENCE

July 2011

Update 2011 – 2

**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 2011 – 1.

This package consists of housekeeping amendments **effective July 20, 2011**.

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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Senior Vice-President
Corporate Affairs

Attachments

Rehabilitation Services & Claims Manual, Volume I

SUMMARY OF AMENDMENTS – Update 2011 – 2

Chapter 3	Pages 19 to 20 and 25 to 26	Policy items #16.40, #18.01, #18.10
Chapter 4	Pages 1 to 2 and 61 to 62	Policy items #25.00 and #31.90
Chapter 12	Pages 45 to 46, 51 to 52, 65 to 66 and 71	Policy items #99.00, #99.24, #100.71 and Notes
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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 #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 claimant 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 claimant. For instance, a claimant 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 claimant'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 claimant's attention as distinguished from the mere killing of time while the claimant 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 claimant 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 claimant is an aggressor in a given situation. However, the fact that a claimant 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 Person's 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

#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 Employer's 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 Employer's 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.

CHAPTER 4

COMPENSATION FOR OCCUPATIONAL DISEASE

#25.00 INTRODUCTION

Section 6 of the *Workers Compensation Act* provides that compensation is payable for occupational disease that is due to the nature of a worker's employment. Section 7 provides that compensation is payable for a certain level of non-traumatic noise-induced hearing loss that results from a worker's employment. This chapter deals with such compensation.

Most compensation cases involve a personal injury (covered in Chapter 3) where it can readily be determined whether the event or series of events leading to such injury arose out of and in the course of employment. The cause of disease, by its nature, is often more difficult to determine. A common difficulty is distinguishing between an injury and a disease (the difference is discussed in #13.10). Even when medical science has identified the cause of a disease in a general sense, it may be difficult to establish with any degree of certainty how and when a worker contracted or developed a disease. Further, workers' compensation does not extend to all diseases, rather only to those that are due to a worker's employment. In these circumstances, determining the extent to which a worker's employment had a role in producing the disease becomes a critical or central issue.

The question is: was the worker's disability caused by his or her work or by something else such as the operation of natural causes, or by congenital or hereditary disease. The *Workers Compensation Act* provides different ways of dealing with this issue. These are discussed in this chapter.

#25.10 Legislative Requirements

Section 6(1) provides:

"Where

- (a) a worker suffers from an occupational disease and is thereby disabled from earning full wages at the work at which the worker was employed or the death of a worker is caused by an occupational disease; and
- (b) the disease is due to the nature of any employment in which the worker was employed, whether under one or more employments,

compensation is payable . . . as if the disease were a personal injury arising out of and in the course of that employment. A health care benefit may be paid although the worker is not disabled from earning full wages at the work at which he or she was employed."

For the diseases to which Section 6(1) of the Act apply, there are three basic requirements for compensability:

1. The worker must be suffering (or in the case of a deceased worker have suffered) from a disease designated or recognized by the Board as an “occupational disease”;
2. The disease suffered by the worker must be or have been “due to the nature of any employment” in which the worker was employed; and
3. The worker must be “disabled from earning full wages at the work” at which he or she was employed as a result of the disease. In the case of a deceased worker, his or her death must have been caused by such disease. This is discussed further in #26.30. This third requirement does not apply to claims for silicosis, asbestosis, or pneumoconiosis (see #29.40) or to claims for non-traumatic noise-induced hearing loss to which Section 7 of the Act apply. Further, a worker need not be disabled by the disease in order to be entitled to health care benefits.

These elements of Section 6 are discussed further in the following sections. The definition of “worker” is covered in Chapter 2.

A disease which is attributed to or is the consequence of a specific event or trauma, or to a series of specific events or traumas, will be treated as a personal injury and will be adjudicated in accordance with the policies set out in Chapter 3.

#26.00 THE DESIGNATION OR RECOGNITION OF AN OCCUPATIONAL DISEASE

Section 1 of the Act defines “occupational disease” as

“any disease mentioned in Schedule B, and any other disease which the board, by regulation of general application or by order dealing with a specific case, may designate or recognize as an occupational disease, and “disease” includes disablement resulting from exposure to contamination” (emphasis added).

There are a great many diseases to which the general public are subject, many of which can be considered ordinary diseases of life. Available medical and scientific understanding about the causes of disease and about the role that employment may play covers a wide range from very good to very poor. Not every disease contracted by every worker is compensable. Deciding when they are is key to the operation of the Act and to adjudicating individual disease claims. It is within this context that decisions must be made as to the compensability of diseases, suffered by workers who are covered by the Act.

health care, is payable in respect of an occupational disease unless the worker is “. . . thereby disabled from earning full wages at the work at which the worker was employed . . .” The one-year time period under the previous and current Section 55 does not begin to run until the worker becomes disabled from earning full wages within the meaning of Section 6(1). It follows that in cases where the exposure to causes of hearing loss terminated prior to January 1, 1974, and no disablement within the meaning of Section 6(1) has yet occurred, health care can always be provided, whether or not an application for compensation has been received from the worker and regardless of the length of time which has elapsed since their exposure terminated. Once the disablement from earning full wages occurs, the worker then has one year to submit an application for compensation (if they have not already done so) or proof of disablement. If no application for compensation or proof of disablement has been received by the end of this period, the worker's claim becomes completely barred even though they may previously have received compensation in the form of health care. If the worker submits proof of disablement, but no application for compensation, by the end of this period only compensation in the form of health care is payable. (12)

#31.80 Commencement of Pension Benefits under Sections 6 and 7

1. The following applies to claims for loss of hearing of non-traumatic origin.
2. Where compensation is being awarded under Section 6, then, subject to Section 55, pension benefits shall be calculated to commence as of the date upon which the worker first became disabled from earning full wages at the work at which the worker was employed.
3. Where compensation is being awarded under Section 7 in respect of a loss of earnings or impairment of earnings capacity, then, subject to Section 55, pension benefits shall be calculated to commence as of the date when the worker first suffered such loss of earnings or impairment of earnings capacity, or as of September 1, 1975, whichever is the later.
4. Where compensation is being awarded under Section 7 but not in respect of any loss of earnings or impairment of earning capacity, then, subject to Section 55, pension benefits shall be calculated to commence as of the earlier of either the date of application or the date of first medical evidence that is sufficiently valid and reliable for the Board to establish a pensionable degree of hearing loss under Schedule D of the Workers Compensation Act. Where the date of application is used as the commencement date, subsequent testing must support a pensionable degree of hearing loss as of the date of application. In no case will pension benefits under Section 7(3) commence prior to September 1, 1975.

#31.90 Assessment of Pensions 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. 0.7%. 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 the psychological condition is a consequence of a physical injury. (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.

#32.20 Physical and Emotional Exhaustion

Physical and emotional exhaustion has not been recognized by the Board as an occupational disease. In a claim made for compensation for a state of physical and emotional exhaustion alleged to have been caused by the stress of work, it

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99.32	Provisions of Copies of File Documents	33(b), (d) and 75	W.C. Act, Div. 4, Sec. 95
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99.41	Transcripts of Workers' Compensation Review Board Hearings	3(2), 4(1) and 33(d)	W.C. Act, Div. 4, Sec. 95
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109.10	Workers' Advisers	33(d)	W.C. Act, Sec. 95
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115.31	Injuries or Aggravations Occurring in the Course of Treatment or Rehabilitation	3(2)	

Section 95(1) of the *Act* provides that “Officers of the Board and persons authorized to make examinations or inquiries under this Part must not divulge or allow to be divulged, except in the performance of their duties or under the authority of the Board, information obtained by them or which has come to their knowledge in making or in connection with an examination or inquiry . . .”

It further provides:

- (1.1) If information in a claim file, or in any other material pertaining to the claim of an injured or disabled worker, is disclosed for the purpose of this *Act* by an officer or employee of the Board to a person other than the worker, that person shall not disclose the information except
- (a) if anyone whom the information is about has identified the information and consented, in the manner required by the Board, to its disclosure,
 - (b) in compliance with an enactment of British Columbia or Canada,
 - (c) in compliance with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of information, or
 - (d) for the purpose of preparing a submission or argument for a proceeding under this Part.
- (1.2) No court, tribunal or other body may admit into evidence any information that is disclosed in violation of subsection (1.1).

Every person who violates Subsection (1) of (1.1) commits an offence. (38) The maximum fine for this offence is set out in Part 1 of Appendix 6.

2. Unsolicited information that appears to be relevant or potentially relevant to the administration of the worker's claim will be investigated for accuracy.
3. Where, after investigation, the information is determined to be inaccurate or its accuracy is unknown, the information will be destroyed, including any record that initiated the investigation, the investigation report and any documentation obtained in connection with the investigation.
4. Where, after investigation, the information is determined to be accurate, a final assessment as to relevancy will be made.
5. Where accurate information is considered to be irrelevant to the administration of the worker's claim, the information will be destroyed, including any record that initiated the investigation, the investigation report and any documentation obtained in connection with the investigation.
6. Where accurate information is considered to be relevant or potentially relevant to the administration of the worker's claim, the information is placed on the worker's claim as follows:
 - (a) anonymous information — The investigation report and any documentation obtained in connection with the investigation will be placed on the claim. The record that initiated the investigation will be destroyed and the claim will state that the investigation was initiated on the basis of information received.
 - (b) information from identified source — The record that initiated the investigation, the investigation report and any documentation obtained in connection with the investigation will be placed on the claim.

An identified source will be advised that the information may be disclosed to the worker. If the identified source wishes to become anonymous at any time, the information will be treated as anonymous information under (a) above. If the identified source wishes to remain identified, this will be recorded on the worker's claim.

7. If only some of the information is accurate and only some of the accurate information is relevant or potentially relevant to the administration of the worker's claim, the record that initiated the investigation will be destroyed and reference will only be made on the worker's claim to information that is both accurate and relevant or potentially relevant.

8. If, during the investigation, accurate information is discovered that is unrelated to the subject matter of the unsolicited information, but is relevant to the administration of the worker's claim, that information will be recorded separately on the worker's claim.
9. Where unsolicited information is found to be accurate and relevant or potentially relevant to the administration of the worker's claim, the worker will be advised of the information and given an opportunity to comment. Complaints about the accuracy and relevancy of unsolicited information will be dealt with according to #99.35 - Complaints Regarding File Contents.

#99.24 Notification of Permanent Disability Awards

When a permanent disability award is granted, the letter advising of the award will include the permanent functional impairment evaluation report on which the award has been based. It will also contain the percentage rate of disability assessed. Where the case is one of Proportionate Entitlement, the letter will state the nature and extent of the pre-existing disability and the nature and extent of the further disability. A copy of the letter is sent to the employer. This letter will include information regarding the relevant rights of review and/or appeal.

Other than to the employer or the worker, the amount being paid per month for a pension will only be disclosed to public or private agencies in accordance with the criteria for disclosure as set out in policy item #99.50.

The amount of the capital reserve is disclosed to the employer when notified of the award. The reserve amounts will be given to the worker on request.

EFFECTIVE DATE: March 3, 2003 (as to references to review and appeal)
APPLICATION: Not applicable.

#99.30 Disclosure of Claim Files

The claim file is the master file for recording information used in the adjudication and administration of a claim. Information may exist outside of the claim file. However, all evidence used in the adjudication of the claim is contained in the claim file. When obtained by the Adjudicator or other Board officer, the opinions of both outside physicians and Board Medical Advisers, as well as any further comments on the part of the Adjudicator or other Board officer, are all recorded on, and become part of, the claim file.

#100.70 The Awarding of Costs

The provisions in policy item #100.00 to policy item #100.60 relate to the payment of expenses by the Board. An order for the payment of costs by one party to another under section 100 of the *Act* is a separate matter, and is an alternative that may be considered in an appropriate case.

Section 100 provides that “The Board may award a sum it considers reasonable to the successful party to a contested claim for compensation or to any other contested matter to meet the expenses the party has been put to by reason of or incidental to the contest, and an order of the Board for the payment by an employer or by a worker of a sum so awarded, when filed in the manner provided for the filing of certificates by section 45(2), becomes a judgment of the court in which it is filed and may be enforced accordingly.”

A “contested claim”, for the purposes of section 100, is one in respect of which there has been a review by the Review Division by the worker or the employer. An appeal to a Medical Review Panel might amount to a “contest” of a claim but it is unlikely that a question of costs would arise in such a case.

An award under section 100 might be made on a review but only in unusual cases. The section is limited to cases where the worker or employer abuses their respective rights under the *Act*. For instance, the worker or employer may put the opposite party to the expense of an appeal for no good reason. In other words, it may appear that a review was pursued simply because the right to request a review existed and without any substantial grounds on which the position could be argued.

An award will not likely be made under section 100 in favour of a successful appellant. The section requires that the expenses in respect of which the award is made be “. . . by reason of or incidental to the contest, . . .” Since the appeal will be proceeded with and resolved whether or not it is opposed by the other party, it cannot normally be said that the expenses of the appellant are due to the other party’s “contest” of the review. Where the review is not opposed by the other party, the reasons for not making an award become even stronger.

Section 6 of the *Workers Compensation Act Appeal Regulation* (B.C. Reg. 321/2002) provides that the Workers’ Compensation Appeal Tribunal may award costs related to an appeal under Part 4 of the *Act* to a party if the Workers’ Compensation Appeal Tribunal determines that:

- another party caused costs to be incurred without reasonable cause, or caused costs to be wasted through delay, neglect or some other fault;
- the conduct of another party has been vexatious, frivolous or abusive;
or

- there are exceptional circumstances that make it unjust to deprive the successful party of costs.

EFFECTIVE DATE: March 3, 2003 (as to references to review, the Review Board and section 6 of the *Workers Compensation Act Appeal Regulation*)

APPLICATION: Not applicable.

#100.71 Application for Costs by Dependant

On an application under former section 11 of the *Act*, the Board certified that the defendant to a third party action was not an employer under the *Act*. The plaintiff then applied for an order for costs of the proceedings before the Board to be paid by the third party defendant. The Board determined that:

“ . . . the authority of the Board to enforce payment of an order for costs is limited to an order for payment by an employer, or by a worker. The Third Party in this case is neither an employer nor a worker under Part I, and the Board has therefore no authority to make an order for costs against the Third Party. It may well be that this limitation under Section 100 has a historical explanation that does not reflect any rational policy currently relevant. But it is a clear limitation in the Act, and it must therefore be followed.”

The question arises whether an award under section 100 can be made in favour of the dependants of a deceased worker. Such an award would not contradict the previous determination, as the person against whom it would be made is an employer under the *Act*. However, it was considered unfair to make such an award if the employer could not get a like award against the dependant. Therefore, an award of costs will not be made in favour of a dependant of a deceased worker against an employer.

EFFECTIVE DATE: March 3, 2003 (as to reference to former section 11)

APPLICATION: Not applicable.

#100.72 What Costs May Be Awarded?

It would not be reasonable to make an order for costs against a worker or employer in respect of an expense which the Board would not allow under the rules set out in #100.00-50. Therefore, an award of costs will not include the fees of lawyers and other persons paid to them for advice or advocacy in connection with a claim for compensation.

NOTES

- (1) S.53(2)
- (2) S.53(3)
- (3) See #94.11
- (4) *Workers' Compensation Board of British Columbia, W.C.B. News*, November – December, 1975, 4
- (5) S.50, prior to repeal by S.27, *Workmen's Compensation Amendment Act*, 1974 (hereafter referred to as W.C.A., 1974)
- (6) See #93.22
- (7) S.55(1)
- (8) S.55(4)
- (9) S.52, prior to repeal by S.29, W.C.A., 1974
- (10) S.55(1)
- (11) S.12; See #49.00
- (12) S.54(2)
- (13) S.54(3)
- (14) S.54(6)(b)
- (15) S.54(9)
- (16) See #34.40
- (17) See #74.10
- (18) S.56(1)(b)
- (19) S.56(1)(c)
- (20) S.56(5)
- (21) S.56(1)(d)
- ~~(22) S.99 Deleted~~
- (23) See Chapter 16
- (24) See #112.30; #113.30
- (25) See #73.54
- (26) See #34.40
- (27) *Workers' Compensation Board of British Columbia, W.C.B. News Bulletin*, September – October, 1973
- (28) S.5(4); See #14.10
- (29) S.6(3); See #26.21
- (30) S.6(11); See #29.50
- (31) See #95.10
- (32) See #97.10
- (33) See #74.60
- (34) S.88(2)
- (35) S.88(4)
- (36) S.88(5)
- (37) S.21, *Evidence Act*
- (38) S.95(2)
- ~~(39) See #103.00 Deleted~~
- (40) See #84.00
- (41) See #48.10

#115.00 PROVISIONS CHARGING INDIVIDUAL EMPLOYERS

One provision of this nature has been discussed in #94.15. Section 54(8) permits the Board to charge an employer with the costs of a claim where late in submitting a report of injury to the Board.

Other provisions of this nature are discussed below.

#115.10 Failure to Register as an Employer at the Time of Injury

Where an employer is an employer to which the Act extends compulsory coverage, failure to register with the Board as an employer will not prejudice any claim by the employees unless the provisions set out in Workers' Compensation Reporter 335 and 20:30:30 of the Assessment Policy Manual apply. However, the employer may be faced with paying the costs of the claim under Section 47(2) which provides as follows:

“An employer who refuses or neglects to make or transmit a payroll return or other statement required to be furnished by the employer under section 38(1), or who refuses or neglects to pay an assessment, or the provisional amount of an assessment, or an installment or part of it, must, in addition to any penalty or other liability to which the employer may be subject, pay the board the full amount or capitalized value, as determined by the board, of the compensation payable in respect of any injury or occupational disease to a worker in the employer's employ which happens during the period of that default, and the payment of the amount may be enforced in the same manner as the payment of an assessment may be enforced.”

Section 38(1) provides that “Every employer must

- (a) keep at all times at some place in the Province, the location of which the employer has given notice to the board, complete and accurate particulars of the employer's payrolls;
- (b) cause to be furnished to the board
 - (i) when the employer becomes an employer within the scope of this Part; and,
 - (ii) at other times as required by a regulation of the board of general application or an order of the board limited to a specific employer, an estimate of the probable amount of the payroll of each of the employer's industries within the scope of this Part, together with any further information required by the board; and
- (c) furnish certified copies of reports of the employer's payrolls, at or after the close of each calendar year and at the other times and in the manner required by the board.”

The Board may, under Section 47(3), if satisfied that the default was excusable, relieve an employer in whole or in part from liability under Section 47(2).

The Board has decided that Section 47(2) applies to claims for fatalities.

The charge made under Section 47(2) is in addition to any ordinary assessments which the employer may be liable to pay for the period prior to the occurrence of the injury.

Item #113.30 dealt with the rules followed in charging the costs of claims where an employer is carrying on business in two or more provinces and is required to register in both. Where such an employer is not registered in this province at the time of an injury, there may be personal liability for the costs of the claim under Section 47(2) in any situation where, under the provisions of the Interjurisdictional Agreement or otherwise, the employer's class would ordinarily be charged.

#115.11 Procedure for Applying Section 47(2)

Following the acceptance of a claim, the Board officer will write to the employer and advise of the potential for liability under section 47(2). The employer will be invited to make comments as to why he or she should not be charged with the costs of the claim. A decision on the employer's liability, and whether or not to provide relief from any liability, will then be made by a committee comprised of the Board's General Counsel or delegate and the Director or Manager, Assessment Policy, of the Assessment Department. The employer may request a review by the Review Division of the decision.

The committee, when reviewing a claim for the purpose of section 47(2), will not consider arguments made by the employer which question the validity of the Board officer's decision to accept the claim. If the employer wishes to challenge that decision, he or she must exercise the right to request a review by the Review Division with respect to the acceptance of the claim.

EFFECTIVE DATE: March 3, 2003 (as to reference to review)

APPLICATION: Not applicable.

#115.20 Significance of Employer's Conduct in Producing Injury

Generally speaking, whether or not an employer was at fault is not a material factor when determining how the costs of a claim are to be charged. The rules set out in policy item #113.00 apply both when the employer's negligence or misconduct caused an injury and when the injury was due to circumstances beyond the employer's control. However, an exception is provided by section 73(2), which states as follows:

“Where an injury, death or disablement from occupational disease in respect of which compensation is payable occurs to a worker, and the

APPENDIX 1

INDEX OF RETIRED DECISIONS FROM VOLUMES 1 – 6 (DECISIONS NO. 1 – 423) OF THE *WORKERS' COMPENSATION REPORTER*

EXPLANATORY NOTE:

The Board of Directors Bylaw re: Policies of the Board of Directors lists the policy manuals and other documents that are policies for purposes of the *Workers Compensation Act*. Included in the list are Decisions No. 1 – 423 in volumes 1 – 6 of the *Workers' Compensation Reporter*. These Decisions consist, for the most part, of decisions made by the former commissioners on various matters between 1973 and 1991.

In order to reduce the number of sources of policies, a strategy has been approved for consolidating Decisions No. 1 – 423 into the various policy manuals, as appropriate, and “retiring” the Decisions over time.

“Retire” for this purpose means that, as of the “retirement date”, the Decision is no longer current policy under the Board of Directors Bylaw.

“Retiring” does not affect a Decision’s status as policy prior to the date it was “retired”. A “retired” Decision therefore applies in decision-making on historical issues to the extent it was applicable prior to the “retirement date”. “Retiring” also does not affect the disposition of any individual matters dealt with in a Decision.

This Index sets out the Decisions from volumes 1 - 6 that have been “retired” and the “retirement date”. It will be updated as further Decisions are “retired” in the future.¹

Please note that:

- As of January 1, 2010, only one Decision from Volumes 1 – 6 of the *Workers' Compensation Reporter* remains to be retired: No. 231. This Decision will be addressed in the near future.
- Policy decisions of the former Governors and the former Panel of Administrators still in effect immediately before February 11, 2003 are numbered similarly to Decisions No. 1 – 423. Many decisions of the former Governors and the former Panel of Administrators remain policies of the Board of Directors, and have not been retired.

¹ Decisions that do not appear in the Index should not necessarily be considered current policy. Decisions or parts of Decisions may have been replaced, either expressly or impliedly, by subsequent policies in the policy manuals or other policy documents. Under the Board of Directors Bylaw, where there is a conflict between policy in Decisions No. 1 - 423 and policy in a policy manual listed in the Bylaw, the policy in the manual is paramount. In the event of any other conflict between policies, the most recently approved policy is paramount.