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January 2008

Update 2008 – 1

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

This update of the *Rehabilitation Services & Claims Manual* contains housekeeping amendments and CPI adjustments to the *Manual* implemented since update 2007 – 6.

These amendments include:

- #13.30, *Mental Stress*
- #45.20, *Criteria for Allowing or Disallowing a Commutation*
- #88.50, *Formal Training*
- #102.01, *Changing Previous Decisions – Reopenings*
- #114.40, *Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability*
- CPI Adjustments in Various Chapters

A summary of the amendments **effective January 1, 2008** 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

Rehabilitation Services & Claims Manual, Volume II

SUMMARY OF AMENDMENTS – Update 2008 – 1

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the accident, but then calls in one morning to say he/she is unable to work because he/she is haunted by the images of the event. A diagnosis by a physician or psychologist confirms that the worker suffers from post-traumatic stress disorder as described in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*.

- 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.

worker to stay off work from time to time. The question then arises whether wage-loss benefits should be paid for these periods. If the fluctuations causing the disability are within the range normally to be expected from the condition for which the worker has been granted a permanent disability award, no wage loss is payable. The permanent disability award is intended to cover such fluctuations. Wage loss is only payable in cases where there is medical evidence of a significant deterioration in the worker's condition which not only goes beyond what is normally to be expected, but is also a change of a temporary nature. If the change is a permanent one, the worker's permanent disability award will simply be reassessed.

#34.20 Minimum Amount of Compensation

Wage-loss compensation cannot be less per week than the minimum set out below, unless the worker's average earnings are less than that sum per week, in which case compensation is paid in an amount equal to average earnings. (2)

| | | | \$ Per Week |
|-----------------|---|-------------------|-------------|
| January 1, 2007 | — | December 31, 2007 | 337.98 |
| January 1, 2008 | — | December 31, 2008 | 346.04 |

If required, earlier figures may be obtained by contacting the Board.

The minimum is subject to cost of living adjustments as described in policy item #51.20. However, these adjustments only apply to injuries or disablements occurring after they come into force. Existing payments are not automatically increased to a new minimum, although they may be the subject of cost of living adjustments in their own right.

#34.30 Commencement of Payment

Section 5(2) provides that “Where an injury disables a worker from earning full wages at the work at which the worker was employed, compensation is payable. . . from the first working day following the day of the injury; but a health care benefit only is payable . . . in respect of the day of the injury.”

While the plain wording of the section would seem clearly to indicate that “day of the injury” means calendar day, the Board finds that the intention of the legislation is not to provide payment for the “shift” on which the worker is injured but to provide payment for any subsequent “shift” on which the worker is disabled. Payment of compensation, therefore, will commence effective the shift next following the shift on which the worker is injured.

#34.31 *Worker Continues to Work After Injury*

If a worker continues to work beyond the day of the injury, no compensation is payable until it actually causes a lay-off from work. If the worker works or is paid for part of the day on which the lay-off occurs, the amount of compensation paid for that day is as follows:

- (a) if he or she works or is paid for one quarter of the day or less, compensation is paid for the full day;
- (b) if he or she works or is paid for more than one quarter but less than three quarters of the day, compensation is paid for half the day;
- (c) if he or she works or is paid for three quarters of the day or more, compensation is not paid for the day.

Except where section 34(1) is being applied, (3) the employer is not refunded any money paid to the worker for time not worked on the day when he or she lays off work.

The above rules apply equally where the worker becomes disabled from working following a recurrence of a compensable condition.

#34.32 *Strike or Other Lay-Off on Day Following Injury*

In cases where a worker's job would not have been available during a period of disability, or for some reason the worker cannot or will not be returning to the prior job upon recovery, the following general guidelines will apply.

1. Where the injury disables the worker beyond the day of the injury and this results in an actual loss of earnings or a potential loss of earnings, the requirement of section 5(2) will be met and wage-loss compensation will be paid.
2. Where the disability beyond the day of injury does not result in any actual or potential loss of earnings, the requirements of section 5(2) will be deemed to have not been met.

In interpreting "potential loss" no rigid rules can be established since every case will have to be determined on the information received. In situations where there is a lay-off due to lack of work, a worker would normally be considered as having suffered a potential loss. The position would be similar where a partially disabled worker has continued work on light work and has been laid off due to a lack of work, but payments on such a claim would be considered under section 30 of the *Act*. The general expectation in those situations is that the worker would, if not injured, have immediately sought new employment and the Board should not speculate as to if and when it would have been found. If, however, there is

#37.20 Minimum Amount of Compensation

Section 22(2) provides that the compensation awarded for permanent total disability cannot be less per month than the minimum set out below. This minimum is subject to cost of living adjustments as described (policy item #51.20).

| Date | | | \$ Minimum |
|-----------------|---|-------------------|------------|
| January 1, 2007 | — | December 31, 2007 | 1,464.75 |
| January 1, 2008 | — | December 31, 2008 | 1,499.69 |

If required, earlier figures may be obtained by contacting the Board.

#37.21 Statutory Minimum Application

The statutory minimum only applies in cases where a worker is found to be 100% disabled under the section 23(1) method of permanent disability assessment. It does not apply when the percentage of disability is less than 100% but the worker is found to be totally unemployable under the section 23(3) method of permanent disability assessment. (2)

#37.30 Reopening Claims

Where a claim involving a permanent total disability is reopened, no payments of wage loss can be made. Wage loss may, however, be payable where a worker receiving a permanent total disability award of less than the current maximum suffers a new injury at work. The amount payable would be the difference between the periodic payment being paid on the old claim and 90% of the long term average net earnings on the new claim, limited by the current maximum.

#38.00 COMPENSATION FOR PERMANENT PARTIAL DISABILITY

Section 23 of the *Act* pertains to the determination of a worker's entitlement to compensation for a permanent partial disability award. An award granted under section 23 compensates a worker for permanent partial disability that results from a work injury. Section 23(1) is the mandatory provision that must be applied in the assessment of permanent partial disabilities. Only in exceptional circumstances will an assessment be done under section 23(3).

In all cases where a permanent partial disability results from a work injury, a worker's entitlement to a permanent partial disability award must be calculated using the method set out in section 23(1) of the *Act*. In determining the compensation payable under 23(1), the Board may be guided by section 23(2), which permits the use of a schedule of percentages of impairment of earning capacity for specified injuries or mutilations.

In all but exceptional cases, the effect of the disability on a worker will be appropriately compensated under section 23(1).

Only in exceptional cases will section 23(1) not be the method of assessment used to determine a worker's entitlement to a permanent partial disability award. In these cases the Board considers whether the combined effect of a worker's occupation at the time of injury and the disability resulting from the injury is so exceptional, that the section 23(1) method does not appropriately compensate the worker for the injury. In these exceptional cases, the Board has the discretion to assess a worker's entitlement to a permanent partial disability award under section 23(3) of the *Act*.

#39.00 SECTION 23(1) ASSESSMENT

Section 23(1) of the *Act* provides:

Subject to subsections (3) to (3.2) and sections 34 and 35, if a permanent partial disability results from a worker's injury, the Board *must*

- (a) estimate the impairment of earning capacity from the nature and degree of the injury, and
- (b) pay the worker compensation that is a periodic payment that equals 90% of the Board's estimate of the loss of average net earnings resulting from the impairment.

(emphasis added)

3. The area of the body affected is determined. Five areas are recognized. A minimum and maximum award exists for each of the four classes for each area of the body as shown in the following table:

January 1, 2008 – December 31, 2008

| | Minimum | Maximum |
|--------------------------------------|----------------|----------------|
| Head and Neck | | |
| 1. | \$ 0 | \$ 5,294.47 |
| 2. | 5,294.47 | 10,588.93 |
| 3. | 10,588.93 | 32,163.80 |
| 4. | 32,163.80 | 53,606.35 |
| Each Hand | | |
| 1. | \$ 0 | \$ 1,720.70 |
| 2. | 1,720.70 | 3,573.75 |
| 3. | 3,573.75 | 10,588.93 |
| 4. | 10,588.93 | 17,868.77 |
| Each Arm | | |
| 1. | \$ 0 | \$ 1,323.60 |
| 2. | 1,323.60 | 2,647.23 |
| 3. | 2,647.23 | 8,074.01 |
| 4. | 8,074.01 | 13,368.52 |
| Each Leg (including the foot) | | |
| 1. | \$ 0 | \$ 926.52 |
| 2. | 926.52 | 1,720.70 |
| 3. | 1,720.70 | 5,294.47 |
| 4. | 5,294.47 | 8,838.91 |

| | | |
|-------|----------|-----------|
| Torso | | |
| 1. | \$ 0 | \$ 926.52 |
| 2. | 926.52 | 1,720.70 |
| 3. | 1,720.70 | 5,294.47 |
| 4. | 5,294.47 | 8,838.91 |

The above figures are 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 amount of the award is (subject to the minimum) the percentage of the maximum dollar amount for the class that the average points for the disfigurement bears to the maximum points assigned to the class. For example, if the average points for a hand disfigurement is 6, it is assigned to Class 1 of the hands area of the body and the amount of the award is \$325 $((6/24) \times \$1,300)$. If a burn to the chest is assigned an average of 34 points, it is in Class 2 of the torso area of the body and the amount of the award is \$897 $((34/49) \times \$1,300)$.

Detailed examples of the application of the above guidelines are set out below:

Example 1

The worker has a loss of the fingernail and nailbed, slight shortening of the right mid finger, a small curved raised nail growing through the graft at the injury site. Assuming that the disfigurement was found capable of impairing earning capacity, the award would be calculated as follows:

| Factors | Description | Points |
|------------------|-------------------------------|--------|
| Surface area | Less than 25% | 2 |
| Texture / keloid | Minimal alteration; no keloid | 2 |
| Colour | No contrast | 0 |
| Visibility | Less than 25% | 20 |
| Structure | Mild evidence of depression | 5 |

5. Where there is an application by a widow or widower to commute an award which is paid in whole or part for the children regard may have to be had to the separate interests of the children.
6. If the other requirements are met, a commutation may be in the worker's long-term interests, notwithstanding the worker's medical condition may not have settled or involves a significant risk of deterioration. However, while a potential deterioration in the worker's condition will not automatically bar a request, it is a relevant factor to be considered. It might, for instance, lead to a conclusion that the worker's existing income from other sources would not be stable from a long-term point of view.

Similarly, the fact that a disability may improve in the future will not automatically bar a request for a commutation, even though the commutation will prevent the Board from reducing the permanent disability award when the improvement occurs. The possibility of such an improvement may, however, be taken into account if it is significant. It may influence the amount of commutation granted.

7. A short expectation of life or a worker's wish to benefit the dependants following his or her death is not a ground on which the Board can permit a commutation.

EFFECTIVE DATE: March 1, 2007

APPLICATION: The amendments to this policy, that term commutations are no longer available, brought into effect by BOD Resolution No. 2007/01/23-02, apply to all applications for commutations made on or after March 1, 2007.

HISTORY: This policy was amended effective October 1, 2002. Changes were made to the threshold amounts for automatic commutations and the criteria for considering commutations were broadened. Please refer to BOD Resolution No. 2002/08/27-04 for details of the amendments. The policy as amended October 1, 2002 applies to all new claims received, all active claims that were awaiting an initial permanent disability award adjudication, and all active claims that were awaiting initial adjudication of periodic payments of compensation to a dependant of a deceased worker, on or after October 1, 2002. The policy as amended October 1, 2002 does not apply to workers in receipt of a permanent disability award based on a projected loss of earnings that was initially adjudicated before October 1, 2002.

This policy was created on July 16, 2002 to apply to all decisions made on or after July 16, 2002 in respect of injuries occurring on or after June 30, 2002, permanent disabilities where the permanent disability first occurred on or after June 30, 2002, and recurrences where the recurrence occurs on or after June 30, 2002, irrespective of the date of injury.

#45.21 *Death of Worker Prior to Award under Category A in Policy Item #45.10*

Under the terms of the *Act*, disability awards are payable to a worker. There is no provision for a disability award to be payable in respect of a deceased worker.

The *Act* distinguishes between two different categories of benefits:

1. Benefits payable to a disabled worker.
2. Benefits payable to dependants and others in respect of the death of a worker.

No compensation under the first heading can validly be awarded in respect of future disability after the death of a worker. Where future benefits have been issued after the death of a worker, the benefit will be cancelled and recalculated up to the date of the worker's death. The letter of decision sent by the Disability Awards Officer was therefore void, and no payment was due under it.

#45.30 **Types of Commutations Permitted**

Where a partial or full commutation of a permanent disability award is granted, the corresponding portion of the future amounts that are to be set aside for payment of a retirement benefit will also be commuted.

Any amounts that have already been set aside by the Board in the retirement reserve will be held in the reserve until the worker reaches retirement age. These amounts will not be commuted.

There are two types of commutations that the Board may permit:

1. A partial commutation resulting in a reduced level of both the permanent disability periodic payments, and corresponding retirement benefits set aside by the Board.
2. A full commutation of both the permanent disability award, and corresponding retirement benefits set aside by the Board.

With the exception of the retirement benefit provisions, the Board permits the same types of commutations of periodic payments of compensation made to a dependant of a deceased worker.

To ensure that a commutation is used for the purpose for which it is sought, the Board may make a commutation cheque payable to a worker and to another.

EFFECTIVE DATE: March 1, 2007

APPLICATION: This policy applies to all applications for commutations made on or after March 1, 2007.

CROSS REFERENCES: Chapter 18, *Retirement Benefits*

#45.40 Purpose of Commutations

Certain purposes for which commutations are commonly requested are discussed below. The list is not intended to cover every purpose for which a commutation may be requested but rather is designed to provide guidelines to ensure the consistent handling of certain common types of application.

#45.41 *Paying Off Debts*

The Board is concerned that lenders might be encouraged to grant excessive extensions of credit to workers in receipt of permanent disability awards if they became aware that commutations could easily be obtained to pay off debts. Section 15 of the *Act* seeks to protect workers from creditors by making permanent disability periodic payments non-assignable. The Board will not undermine this intention by freely allowing commutations for the purpose of debt reduction. Therefore, a commutation is more likely to be allowed for paying off debts that were incurred prior to the injury.

A person incurring heavy debt may have serious long-term problems which will not be resolved simply by a commutation to pay debts. These problems may lead to incurring further debt even if the existing debt is paid. The person will then be in an even more serious position than before because there will now be no permanent disability periodic payments. It may, in such cases, be more appropriate to refer the worker for financial counselling rather than to attempt to resolve the situation by a commutation of permanent disability periodic payments. Nevertheless, a commutation to pay off debts may be advisable and in the best interests of the worker if it will avoid high interest obligations. Commutation applications for this purpose will be carefully scrutinized for other alternatives before being allowed.

#45.42 *Investments*

A commutation will not be allowed for investment purposes.

#45.43 *Starting a Business*

From a purely financial standpoint, it may be difficult to distinguish between investing in one's own business and other forms of investment. It is, moreover, often difficult for officers of the Board to determine with any degree of certainty whether what the worker wishes to undertake is a sound business venture.

Investing in one's own business, however, may be in the worker's best interests where there is a strong element of rehabilitation involved and the worker will be an active participant in operating the business. Any application for a commutation for the purpose of starting a business will be thoroughly investigated with these considerations in mind.

In each case where a business start-up is contemplated for which a commutation has been requested, or as a vocational rehabilitation measure, the Board officers undertaking the assessment of the matter will obtain, with the worker's written consent, an appraisal of the viability of the proposed business from the Business Development Bank of Canada or some similar organization before a final decision on the commutation request, or rehabilitation measure, is made.

#45.44 *Education*

Unless the proposed educational program will promote the worker's career, a commutation for this purpose would not normally enhance the worker's income position and consequently would not satisfy the above general guidelines. There may, however, be some therapeutic benefit in allowing workers to improve their education when the improvement cannot be provided through normal rehabilitation programs. The requirement for the applicant to have a stable source of income may be waived where the Board is satisfied that the training or educational program will increase the prospects of employment and therefore enhance the income position over the long term. Where the program will not increase the employment prospects, but will have a significant therapeutic benefit, the Board may waive the requirement that the commutation be for a purpose that enhances the worker's income position. In such a case, it will not waive the requirement that the applicant have a stable source of income.

#45.45 *Buying a Home*

Commutations for purchasing a home will be allowed under the following conditions:

1. The home is purchased as a personal residence.
2. The worker will obtain clear title to the property subject only to any mortgage.

3. Any mortgage payments are well within the worker's ability to pay from other income.
4. The size, value and upkeep costs of the home are in line with other income.

The discharge or reduction of an existing mortgage will be dealt with under the criteria for paying off debts in policy item #45.41, rather than under the criteria for buying a home. In administering this feature, however, a request for a commutation to discharge or reduce an existing mortgage should primarily be considered in the same general vein as a commutation to purchase a home, with the added insurance that consideration should be given to the safeguards built into the debt payment provisions. The expectation of this approach is that, in general, given similar circumstances, there should be little difference in the result following a decision made under either category. A commutation for the purpose of extending an existing home may be allowed if the above requirements are satisfied.

A commutation will not normally be allowed for the purpose of purchasing a second home to be used for vacations, or retirement, or to be rented out. The home must be for the purpose of providing the claimant with current accommodation.

#45.50 Decision-Making Procedures

The Board officer in Disability Awards is responsible for investigating an application for a commutation and making a decision on the application. The Board officer may obtain a report from the Board officer in Vocational Rehabilitation Services involved in the claim before making a decision.

Where a commutation application is under consideration, the value of the proposed commutation can be made available so that the claimant may properly evaluate the options open.

If the value of a commutation under Category B in policy item #45.10 exceeds the limit set in Category A, the Board officer must obtain approval of the Vice-President, Compensation Services Division before granting the request. Where an application is received that does not fall within the guidelines and it is thought that there should be some departure, the application must also be referred to the Vice-President for consideration.

An employer is not normally advised of the granting of a commutation. An exception is made where the employer is the Federal Government. It is advised of the amount and type of the commutation.

#45.60 Amount Paid on Commutations

When a permanent disability award reserve and a retirement reserve are established or a liability is calculated for an award and a retirement benefit, the monthly payment amount and the periodic future amounts to be set aside by the Board for the payment of a retirement benefit, are converted to a lump sum by applying an actuarial net discount rate. This provision also applies where a reserve is established or a liability is calculated for periodic payments of compensation made to a dependant of a deceased worker. The actuarial net discount rate is set by the Board and represents the anticipated difference between long term future investment returns and long term future inflation.

Similarly, when a permanent disability award commutation is granted, the monthly permanent disability award amount and the periodic amounts set aside by the Board for a retirement benefit are converted to a lump sum by applying a commutation net discount rate. For permanent disability awards and the future amounts to be set aside by the Board for the payment of a retirement benefit that are automatically commuted by the Board without a request from the worker, the commutation net discount rate used will be equal to the actuarial net discount rate. For permanent disability awards and the future amounts to be set aside by the Board for the payment of a retirement benefit that are commuted by the Board at the worker's request, the commutation net discount rate used will be equal to the actuarial net discount rate increased by .5 percentage points. The increased net discount rate also applies to a commutation granted by the Board at the surviving dependant's request.

#45.61 *Calculation of Lump-sum Payment or Commutation*

Where, as a result of the application of the policies outlined in policy items #45.10 to #45.60, the Board officer in Disability Awards decides on a lump sum or commutation, it is paid forthwith.

Whenever a lump-sum payment or commutation is calculated following the review or appeal process, the calculation will be based on the date on which it is processed.

EFFECTIVE DATE: April 8, 2003
APPLICATION: To all decisions made on or after April 8, 2003.

#46.00 REVIEW OF OLD PENSIONS UNDER SECTION 24

Section 24(2) of the *Act* provides:

With respect to a claim for compensation to which this section applies, the board must, on application by the worker, reconsider the compensation

benefits; and, if it decides that, in its opinion, the worker is not receiving adequate compensation having regard to the projected loss of income resulting from the disability, periodic payments must be established or raised accordingly.

#46.01 *Claims to Which Section 24 Applies*

Section 24(1) provides that

This section applies to the claims for compensation that the Board may by regulation determine, provided that

- (a) the worker is still suffering from a compensable disability sustained more than 10 years before the application under subsection (2); and
- (b) a permanent disability award was made by the Board based on a percentage of total disability of 12% or greater, or the case is of a kind in which the Board uses a projected loss of earnings method in calculating compensation.

Regulations have been issued by the Board which are set out below:

1. The regulations come into effect on the 1st day of December, 1982.
2. The regulations with respect to the review of old disability pensions, promulgated by the Board on the 21st day of July, 1975, the 13th day of November, 1975, and the 19th day of August, 1976 (B.C. Regulations 524/75, 746/75 and 492/76) are hereby repealed.
3. Unless the Board otherwise determines, section 24 of the *Act* applies to claims in which all of the following conditions are present:
 - (1) The worker is still suffering from a compensable disability sustained more than ten years previous to the application under section 24(2).
 - (2) A permanent disability award was made by the Board based on a percentage of total disability of 12% or greater, a disability award was made for an injury involving the spinal column, or a disability award was made for an injury to a part of the body other than the spinal column on or after October 1, 1977. Where the worker is still suffering from two or more compensable disabilities, this condition is satisfied if permanent disability awards were made by the Board which in aggregate were based on a percentage of total disability of 12% or greater, provided that a minimum of 5% of total disability was attributed to an injury or injuries sustained

more than ten years previous to the application under section 24(2).

Clause 3(1) of these regulations does not mean that it is a requirement that each claim considered under section 24 must be more than 10 years old. Where a worker has suffered several injuries with permanent disability resulting in several claims, the whole of the compensable disabilities resulting from these claims may be considered, provided that at least one of the compensable disabilities was sustained more than 10 years previous to the application under section 24(2), and that a minimum of 5% of total disability was attributed to an injury or injuries sustained more than 10 years previous to the application.

The requirement in Clause 3(2) that the percentage of disability exceed 12% is a separate and independent requirement from Clause 3(1). Thus, it is not necessary that the disability award should have been made more than 10 years previous to the application, or that it should have been calculated at 12% or greater at any particular time.

The requirement in Clause 3(2) that a non-spinal disability of less than 12% be one that was assessed on or after October 1, 1977, in conjunction with Clause 3(2), means that no application for such a disability can be made under section 24 until October 1, 1987.

Notwithstanding that a worker suffering a permanent disability has received an award that has been wholly or partly commuted, or an award for a fixed term, the worker may apply under this section, but he shall be deemed to be still receiving the periodic payments that have been commuted, or the life equivalent of the periodic payments made for a fixed term. (12)

#46.02 *Calculation of Benefits under Section 24*

Where a worker is under the age of 65 years, compensation is considered adequate for the purposes of this section if it equals 75% of the projected loss of earnings resulting from the disability. (13)

Section 24(4) provides that "Where a worker is 65 years of age or over, compensation is considered adequate for the purposes of this section if it equals 75% of the projected loss of retirement income resulting from the disability."

Where a worker is under the age of 65 years, periodical payments established or raised under this section are subject to readjustment by reference to subsection (4) upon the worker attaining the age of 65 years. (14)

The calculation of benefits is made in the manner the Board determines. (15)

Where a worker is under the age of 65 years, the Board must determine the projected loss of earnings resulting from the disability. This involves three steps:

#49.10 Worker Receiving Custodial Care in Hospital

Section 35(5) provides that “Where a worker is receiving custodial care in a hospital or elsewhere, periodical payments of compensation due to the worker ... may be paid to or for the benefit of

- (a) the worker to the extent the worker is able to make use of the money for his or her personal needs or is able to manage his or her own affairs; or
- (b) any person who is dependent on the worker for support, or in a case of temporary disability of the worker may be
- (c) applied to the maintenance of a home to which the worker is likely to return on his or her recovery; or
- (d) accumulated by the board for payment to the worker on his or her recovery,

or in a case of permanent disability may be applied toward the cost of the worker's maintenance, but, in that case and where the worker is conscious, there must be paid to, or for the use of, the worker a comfort allowance of at least . . .” the amount set out below out of each periodic payment.

| | | | |
|-----------------|---|-------------------|----------|
| January 1, 2007 | — | December 31, 2007 | \$201.95 |
| January 1, 2008 | — | December 31, 2008 | \$206.77 |

If required, earlier figures may be obtained by contacting the Board.

“Subsection (5) applies, regardless of the date of the injury.” (4)

#49.11 *Meaning of Custodial Care in Hospital or Elsewhere in Section 35(5)*

Section 35(5) applies where a worker is receiving “custodial care in a hospital or elsewhere”.

“Custodial care” requires that the worker be undergoing a voluntary or involuntary stay in, and be receiving care from, a hospital or other similar institution. Only long-term or permanent residence in a hospital or similar institution could amount to “custodial care”. It does not cover periodic stays in hospital which a worker might have to undergo for the purpose of surgery or other treatment.

A worker is not considered to be receiving “custodial care” when confined to prison or other corrective institution. While the worker might be said to be in

involuntary custody, it is not felt that the worker is undergoing “care” for the purpose of the section. The case would be different if the prison or corrective institution were also a hospital. The Board has authority under section 98(3) of the *Act* to discontinue the compensation of workers confined to prison. (5)

#49.12 Nature of the Board's Authority under Section 35(5)

Section 35(5) clearly confers a discretionary power on the Board. In exercising this discretion, the Board is free to choose any of the applicable alternatives listed in section 35(5) without regard to the order in which they are set out. There is no obligation on the Board to give any priority to any of the alternative choices set out in the section.

This does not mean that, in exercising its discretion under section 35(5), the Board cannot set its own priorities for the application of the various alternatives. The necessity to set guidelines for Board staff in their administration of this section, as a matter of practice, may require that the Board lay down some order of priority. This will appear from the guidelines set out below in relation to the sub-paragraphs of section 35(5).

#49.13 Application of Section 35(5) in Cases of Temporary Disability

In the case of a worker entitled to temporary disability payments who is receiving custodial care in a hospital or elsewhere, the Board may take any of the alternative courses of action set out in paragraphs (a) to (d) of section 35(5). Guidelines for applying these alternatives are set out below in paragraphs 1. to 4.

1. Worker able to use money for personal needs or to manage personal affairs.

The Board may pay the compensation to the “worker to the extent the worker is able to make use of the money for his or her personal needs or is able to manage his or her own affairs.” Priority should normally be given to this alternative. To the extent able, the worker should make a personal choice as to how much of the compensation payment to spend on personal needs, how much to contribute to the home and family, and how much to save.

This provision requires that a judgment be made on an individual basis as to the amount which the worker is able to use or manage for personal needs. This may be none, all, or part only of the worker’s compensation payment, since payment is to be made to the worker only to the “extent” that the worker is capable of using or managing it.

The Board has discretion to pay interest in situations other than those expressly provided for in the *Act*. In these situations, interest may be paid subject to the following conditions:

- The retroactive payment is:
 - To a worker or employer in respect of a wage loss payment provided under sections 29 and 30 of the *Act*.
 - To a worker or employer in respect of a permanent disability lump sum payment provided under sections 22 and 23 of the *Act*.
 - To a dependant of a deceased worker in respect of a payment provided under section 17 of the *Act*.
- It has been determined that there was a blatant Board error that necessitated the retroactive payment. For an error to be “blatant” it must be an obvious and overriding error. For example, the error must be one that had the Board officer known that he or she was making the error at the time, it would have caused the officer to change the course of reasoning and the outcome. A “blatant” error cannot be characterized as an understandable error based on misjudgment. Rather, it describes a glaring error that no reasonable person should make.
- Interest will be calculated from the first day of the month following the commencement date of the retroactive benefit and up to the end of the month preceding the decision date. Notwithstanding, in no case will interest accrue for a period greater than twenty years.

In all cases where a decision to award interest is made, the Board will pay simple interest at a rate equal to the prime lending rate of the banker to the government (i.e., the CIBC). During the first 6 months of a year interest must be calculated at the interest rate as at January 1. During the last 6 months of a year interest must be calculated at the interest rate as at July 1.

For practical reasons, certain mathematical approximations may be used in the calculations.

The rate of interest provided in this policy will also be used in the calculation of overpayments as outlined in policy item #48.42.

EFFECTIVE DATE: March 1, 2006

APPLICATION: Applies to all decisions, including appellate decisions, made on or after March 1, 2006.

#51.00 COST OF LIVING ADJUSTMENTS TO PERIODIC PAYMENTS

Sections 25(1) and (2) of the *Act* provide the method for indexing periodic payments of compensation to a worker. The sections provide:

- (1) For the purposes of this section, the Board must, as of January 1 of each year,
 - (a) determine the percentage change in the consumer price index for Canada, for all items, for the 12 month period ending on October 31 of the previous year, as published by Statistics Canada, and
 - (b) subtract 1% from the percentage change determined under paragraph (a).
- (2) The percentage resulting from calculations made under subsection (1) must not be greater than 4% or less than 0%.

The Board determines the indexing factor to be applied to periodic payments of compensation to a worker or a dependant in the following manner:

- The Board compares 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.
- One percentage point is subtracted from the percentage change between these two consumer price indexes.
- If the percentage that results from this subtraction is greater than 4%, it is reduced to 4%. If the percentage that results from this subtraction is less than 0%, no adjustment to periodic payments of compensation is made.

The resulting percentage changes determined annually are set out below:

| Date | Percentage |
|-----------------|-------------------|
| January 1, 2008 | 1.385321 |

If required, earlier figures may be obtained by contacting the Board.

The resulting percentage change is applied on January 1 of each year to periodic payments of compensation made continuously in respect of an injury or a death occurring more than 12 months before the date of the adjustment.

If the Board starts or restarts periodic payments of compensation on a date more than 12 months after the date of the worker's injury or death, the Board adjusts all periodic payments as if payments were made continuously from the date of injury or death. This means that if payments on a claim are started or restarted more than 12 months after the injury or death, the worker or dependant receives the benefit of any cost of living adjustments occurring in the interim period as if he or she had been continuously paid since the date of injury or death.

Compensation paid to a worker on or after June 30, 2002 will be indexed according to section 25 of the *Act*, irrespective of the date the worker was injured. However, if the Board pays to a worker, who was injured before June 30, 2002, compensation as a result of a retroactive adjustment, the indexing rules in section 25 of the *Act*, as it read immediately before June 30, 2002, apply to the compensation benefits that should have been paid to the worker before June 30, 2002. Compensation due to the worker on or after June 30, 2002 will be indexed according to section 25 of the *Act*.

Effective December 31, 2003, compensation paid to a dependant of a deceased worker is indexed under section 25 of the *Act* regardless of the date that the worker died. However, if the Board retroactively adjusts compensation in respect of a death that occurred before December 31, 2003, the indexing rules in section 25.1 of the *Act*, as it read immediately before December 31, 2003, apply to the compensation that should have been paid to the dependant before that date. Compensation owing to the dependant on or after December 31, 2003 is indexed under section 25 of the *Act*.

Authority to approve adjustments under section 25 has been assigned to the President.

Effective Date: December 31, 2003 (as to references to benefits paid to surviving dependents).

Application: This policy item applies to all periodic payments made to workers and surviving dependants.

#51.20 Dollar Amounts in the Act

Section 25.2 (1) of the *Act* provides:

Subject to subsection (3), the Board must adjust every dollar amount referred to in this Act on January 1 of each year by applying the percentage change in the consumer price index for Canada, for all items, for the 12 month period ending on October 31 of the previous year, as published by Statistics Canada.

The Board determines the percentage change to be applied each January 1 to dollar amounts in the *Act* by comparing 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.

The resulting percentage changes determined annually are set out below:

| Date | Percentage |
|-----------------|-------------------|
| January 1, 2008 | 2.385321 |

If required, earlier figures may be obtained by contacting the Board.

When the Board makes the adjustments, those dollar amounts referred to in the *Act* are deemed to be amended.

These provisions do not apply to the figures referred to in policy item #39.61, the maximum wage rate and other figures referred to in policy item #69.00.

Authority to approve adjustments under section 25.2 has been assigned to the President.

Authority has also been assigned to the President to adjust the following amounts to reflect changes based upon the consumer price index, using the formula set out in the applicable item of the *Manual*:

| | |
|---|----------|
| Maximum and Minimum Disfigurement Amount | #43.20 |
| Clothing Allowances | #79.00 |
| Personal Care Allowances | #80.20 |
| Independence and Home Maintenance Allowance | #81.00 |
| Transportation Allowance | #82.20 |
| Subsistence Allowances: Meals | #83.20 |
| Transfer of Costs | #114.11 |
| Funeral and Other Death Expenses | C8-54.00 |

**RE: Compensation on the Death of a Worker-
Funeral and Other Death Expenses****ITEM: C8-54.00**

BACKGROUND

1. Explanatory Notes

This policy establishes the amount the Board will pay for funeral and other death expenses following the death of a worker. It also describes who is eligible to receive payments for these expenses.

2. The Act

Section 17(2):

Where compensation is payable as the result of the death of a worker or as the result of injury resulting in death,

- (a) in addition to any other compensation payable under this section, an amount in respect of funeral and related expenses, as determined in accordance with the policies of the board of directors, must be paid out of the accident fund,
- (b) the employer of the worker must bear the cost of transporting the body to the nearest business premises where funeral services are provided, and
- (c) if burial does not take place there, the costs of any additional transportation, up to a maximum determined in accordance with the policies of the board of directors, may be paid out of the accident fund.

Section 17(2.1):

No action for an amount larger than that established by subsection (2) lies in respect of the funeral, burial or cremation of the worker or cemetery charges in connection with it.

POLICY

1. Funeral and Other Death Expenses

Where compensation is payable as the result of the death of a worker or as the result of injury resulting in death, an amount for funeral and related expenses is paid in addition to any other compensation payable. The maximum amount payable for funeral and related expenses is set out below.

The employer of the worker is required to bear the cost of transporting the body to the nearest business premises where funeral services are provided, and if burial does not take place there any additional transportation may, up to the sum set out below, be paid by the Board.

| | Funeral And Related Expenses | Transportation of Body |
|-------------------------------------|---|-----------------------------------|
| January 1, 2007 – December 31, 2007 | \$7,718.04 | \$1,219.39 |
| January 1, 2008 – December 31, 2008 | \$7,902.14 | \$1,248.48 |

If required, earlier figures may be obtained by contacting the Board.

Effective December 31, 2003, the above figures are adjusted annually 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, is used.

No action for an amount larger than that established by the above provisions lies in respect of the funeral, burial, or cremation of the worker or cemetery charges in connection with it.

2. Person to Whom Expenses are Paid

Payment of funeral and related expenses is made to the most eligible person or persons, as determined by the Board. In determining whom to pay, the Board considers who has incurred the cost of funeral and related expenses, or who has undertaken to meet those payments.

Where the funeral and related expenses are less than the maximum provided in this Item, the Board pays only the actual amount of funeral and related expenses.

Once the Board has paid out the maximum amount provided in this Item to one or more persons, the Board does not consider any other claims for funeral and related expenses.

PRACTICE

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

| | |
|--------------------------|--|
| EFFECTIVE DATE: | December 31, 2003 |
| AUTHORITY: | Section 17(2) of the <i>Act</i> |
| CROSS REFERENCES: | Dollar Amounts in the <i>Act</i> (policy item #51.20) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | Replaces policy items #53.00 and #53.10 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| APPLICATION: | This Item applies to the death of a worker on or after December 31, 2003. |

**RE: Compensation on the Death of a Worker-
Lump Sum Payment****ITEM: C8-55.00**

BACKGROUND

1. Explanatory Notes

This policy describes the provision of a lump sum payment to eligible widows, widowers, common-law wives, common-law husbands or foster parents.

2. The Act

Section 17(13):

In addition to any other compensation provided, a dependent widow or widower, common law wife or common law husband or foster parent in Canada to whom compensation is payable is entitled to a lump sum of \$2,333.90.

POLICY

Lump Sum Payment

A dependent widow or widower, common-law wife or common-law husband, or foster parent in Canada to whom compensation is payable as a result of a worker's death is also entitled to a lump sum payment as follows:

| | | | |
|-----------------|---|-------------------|------------|
| January 1, 2007 | — | December 31, 2007 | \$2,279.53 |
| January 1, 2008 | — | December 31, 2008 | \$2,333.90 |

If required, earlier figures may be obtained by contacting the Board.

Payment of this amount is made as soon as the claim is accepted.

PRACTICE

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

| | |
|--------------------------|--|
| EFFECTIVE DATE: | December 31, 2003 |
| AUTHORITY: | Section 17(13) of the <i>Act</i> . |
| CROSS REFERENCES: | Dollar Amounts in the <i>Act</i> (policy item #51.20) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | Replaces policy item #55.10 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| APPLICATION: | This Item applies to the death of a worker on or after December 31, 2003. |

**RE: Compensation on the Death of a Worker
Calculation of Compensation –
Widow or Widower with Children**

ITEM: C8-56.00

BACKGROUND

1. Explanatory Notes

This policy describes how compensation as a result of a worker's death is calculated for a dependent widow or widower with dependent children.

2. The Act

Section 17:

- (3) Where compensation is payable as the result of the death of a worker or of injury resulting in such death, compensation must be paid to the dependants of the deceased worker as follows:
- (a) where the dependants are a widow or widower and 2 or more children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those dependants, would equal the total of
 - (i) the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, subject to the minimum set out in paragraph (g); and
 - (ii) \$303.29 per month for each child beyond 2 in number.
 - (b) where the dependants are a widow or widower and one child, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those dependants, would equal 85% of the monthly rate compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, subject to the minimum set out in paragraph (g).
 - (g) the minimum allowances payable under paragraphs (a), (b) and (f) must be the allowances that would be payable if the allowances were calculated under those paragraphs in respect of a deceased worker with average earnings of \$32,673.61 per annum.

POLICY

This Item applies to a widow or widower and children who were wholly or partly dependent on a worker's earnings at the time of the worker's death. A widow or widower and children who were not dependent upon the worker's earnings may be entitled to compensation under Item C8-56.70.

1. Calculation of Compensation – Widow or Widower with Two or More Children

The monthly payment for a dependent widow or widower and two or more dependent children is calculated as follows:

- (I) The Board adds:
- (a) the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, subject to the minimum provided in section 4 of this Item, and
 - (b) the following amount per month for each child beyond two in number.

| | | | |
|-----------------|---|-------------------|----------|
| January 1, 2007 | — | December 31, 2007 | \$296.22 |
| January 1, 2008 | — | December 31, 2008 | \$303.29 |

If required, earlier figures may be obtained by contacting the Board.

- (II) The Board then deducts 50% of the federal benefits payable to or for the dependants from the sum determined above.

The example below describes the monthly benefits that would be payable for a dependent widow or widower and three dependent children following the death of a worker on June 30, 2002. The worker's average net earnings were \$40,000 per year.

A. 50% of total federal benefits

| | | | |
|--|--------------|---|--------|
| Federal benefits for widow or widower | | = | 437.99 |
| Federal benefits for children | (3 x 183.77) | = | 551.31 |
| Total federal benefits (widow or widower and children) | | = | 989.30 |
| 50% of total federal benefits | 50% x 989.30 | = | 494.65 |

| | | | | |
|----|--|---------------------------------|---|----------|
| B. | Monthly permanent total disability award rate at date of death | $90\% \times \frac{40,000}{12}$ | = | 3,000 |
| C. | Additional child allowance under section 17 | | = | 263.70 |
| D. | Total monthly benefits (B plus C) | | = | 3,263.70 |
| | Total benefit entitlement (W.C.B. and federal benefits) | | = | 3,263.70 |
| E. | Total W.C.B. monthly benefits payable (D less A) | | = | 2,769.05 |

2. Calculation of Compensation – Widow or Widower with One Child

The monthly payment for a dependent widow or widower with one dependent child is calculated as the difference between:

- (a) 85% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, subject to the minimum provided in section 4 of this Item, and
- (b) 50% of the federal benefits payable to or for the dependants.

In the example described in section (1) above, monthly benefits would be payable to a dependent widow or widower and one dependent child as follows:

| | | | | |
|----|--|---------------------------------|---|--------|
| A. | 50% of total federal benefits | | | |
| | Federal benefits for widow or widower | | = | 437.99 |
| | Federal benefits for child | | = | 183.77 |
| | Total federal benefits | | = | 621.76 |
| | 50% of total federal benefits | $50\% \times 621.76$ | = | 310.88 |
| B. | Monthly permanent total disability award rate at date of death | $90\% \times \frac{40,000}{12}$ | = | 3,000 |

| | | | | |
|----|---|-------------|---|----------|
| C. | 85% of permanent total disability award rate | 85% x 3,000 | = | 2,550 |
| | Total benefit entitlement (W.C.B. and federal benefits) | | = | 2,550 |
| D. | Total W.C.B. monthly benefits payable (C less A) | | = | 2,239.12 |

3. Change in Federal Benefits

If the Board receives evidence of a change in a dependant's entitlement to federal benefits, the amount of federal benefits deducted from the compensation for that dependant is adjusted accordingly. For instance, if the Board receives evidence that children's benefits under the Canada Pension Plan have been terminated, the amount of federal benefits deducted from the compensation for that child will be adjusted. The adjustment takes effect as of the date of the change in federal benefits.

4. Minimum Monthly Benefits

The minimum monthly payment under this Item must not be less than the amount that would be payable if, at the date of death, the deceased worker had the following average earnings:

| | | | |
|-----------------|---|-------------------|-------------|
| January 1, 2007 | — | December 31, 2007 | \$31,912.40 |
| January 1, 2008 | — | December 31, 2008 | \$32,673.61 |

If required, earlier figures may be obtained by contacting the Board.

5. Commencement of Benefits

Benefits under this Item commence on the day after the date of the worker's death.

6. Duration and Recalculation of Benefits

Compensation for a dependent widow or widower is payable for life.

Benefits for a dependent widow or widower with children are recalculated in accordance with Item C8-57.00 as each child ceases to meet the requirements, described in Item C8-53.10, to be eligible for compensation as a "child" of the deceased worker.

Benefits for dependent children are recalculated under Item C8-57.00 if the widow or widower dies before the children cease to meet the requirements, as described in Item C8-53.10, to be eligible for compensation as "children" of the deceased worker.

PRACTICE

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

| | |
|--------------------------|--|
| EFFECTIVE DATE: | June 30, 2002 |
| AUTHORITY: | Sections (17)(3)(a), (b) and (g) of the <i>Act</i> . |
| CROSS REFERENCES: | Compensation on the Death of a Worker – Definitions – Meaning of “Dependant” and Presumptions of Dependency (Item C8-53.00), Compensation on the Death of a Worker – Definitions – Meaning of “Child” or “Children” (Item C8-53.10), Compensation on the Death of a Worker – Definitions – Meaning of “Federal Benefits” (Item C8-53.20), Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit (Item C8-56.70) and Compensation on the Death of a Worker – Recalculation of Compensation on a Change in Circumstances (Item C8-57.00) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | Replaces policy items #55.00, #55.20, #55.21, #55.22, #55.26, #55.60 and #61.60 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| APPLICATION: | This Item applies to the death of a worker on or after June 30, 2002. |

**RE: Compensation on the Death of a Worker
Calculation of Compensation –
Widow or Widower with No Children**

ITEM: C8-56.10

BACKGROUND

1. Explanatory Notes

This policy describes how compensation as a result of a worker's death is calculated for a dependent widow or widower with no dependent children.

2. The Act

Section 1:

“invalid” means physically or mentally incapable of earning.

Section 17:

- (3) Where compensation is payable as the result of the death of a worker or of injury resulting in such death, compensation must be paid to the dependants of the deceased worker as follows:
- (c) where the dependant is a widow or widower who, at the date of death of the worker, is 50 years of age or over, or is an invalid spouse, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for that dependant, would equal 60% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, but the monthly payments must not be less than \$980.04.
 - (d) where the dependant, at the date of death of the worker, is a widow or widower who is not an invalid and is under the age of 50 years, and there are no dependent children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for that dependant, would equal the product of
 - (i) the percentage determined by subtracting 1% from 60% for each year that the age of that dependant, at the date of the death of the worker, is under 50 years, and
 - (ii) the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability,

but the percentage determined under subparagraph (i) must not be less than 30% and the monthly payments must not be less than \$980.04.

- (6) Where at the date of death a spouse is not an invalid, but is suffering from a disability that results in a substantial impairment of earning capacity, the Board may, having regard to the degree of disability or the extent of impairment of earning capacity, pay the spouse a proportion of the compensation that would have been payable if the spouse had been an invalid.

POLICY

This Item applies where there are no dependent children, but there is a widow or widower who was wholly or partly dependent upon a worker's earnings at the time of the worker's death. A widow or widower who was not dependent upon the worker's earnings may be entitled under Item C8-56.70.

1. Meaning of "Invalid"

The term "invalid" is defined in the *Act* as "physically or mentally incapable of earning". This means the person is not capable of independently supporting himself or herself financially. A person who has a physical or mental disability, but is capable of independently supporting himself or herself financially is not an "invalid". A temporary physical or mental incapacity to earn is not sufficient to determine that a person is an "invalid".

Where at the date of death a spouse is not an invalid, but is suffering from a disability that results in a substantial impairment of earning capacity, the Board may, having regard to the degree of disability or the extent of impairment of earning capacity, pay the spouse a proportion of the compensation that would have been payable if the spouse had been an invalid.

2. Calculation of Compensation – Widow or Widower 50 Years or Older or Invalid

The monthly payment for a widow or widower who, at the date of the worker's death, is either:

- 50 years of age or over, or
- an invalid,

WORKING TO MAKE A DIFFERENCE

is calculated as the difference between:

- (a) 60% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, and
- (b) 50% of the federal benefits payable to or for the widow or widower.

The monthly payment is subject to the minimum amount provided in section 5 of this Item.

3. Calculation of Compensation – Widow or Widower under 50 Years

The monthly payment for a widow or widower who, at the date of the worker's death, is not an invalid and is under the age of 50 years is calculated as follows:

- (I) The Board multiplies:
 - (a) the percentage determined by subtracting one percentage point from 60%, to a minimum of 30%, for each year that the age of the widow or widower, at the date of the worker's death, is under 50 years, and
 - (b) the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability.
- (II) The Board then deducts 50% of the federal benefits payable to or for the widow or widower from the product determined above.

The monthly payment is subject to the minimum amount provided in section 5 of this Item.

When determining the percentage under (I)(a) above, the Board does not round up the age of the widow or widower to the nearest whole number. For instance, a widow or widower who is 35 years and 11 months is considered 35, not 36, for the purpose of determining the percentage to use in establishing benefits.

The example below describes the monthly benefits that would be payable for a dependent widow or widower who, at the date of the worker's death, has no children and is 35 years old. The worker, whose death occurred on June 30, 2002, had average net earnings of \$40,000 per year.

A. 50% of federal benefits

| | | |
|---------------------------------------|---|--------|
| Federal benefits for widow or widower | = | 437.99 |
|---------------------------------------|---|--------|

| | | | | |
|----|--|---------------------------------|---|-------|
| | 50% of federal benefits | $50\% \times 437.99$ | = | 219 |
| B. | Determination of percentage based on widow's age | $50 - 35$ | = | 15% |
| | Relevant percentage | $60\% - 15\%$ | = | 45% |
| C. | Monthly permanent total disability award rate at date of death | $90\% \times \frac{40,000}{12}$ | = | 3,000 |
| D. | 45% of permanent total disability award rate | $45\% \times 3,000$ | = | 1,350 |
| | Total benefit entitlement (W.C.B. and federal benefits) | | = | 1,350 |
| E. | Total W.C.B. monthly benefits payable (D less A) | | = | 1,131 |

4. Change in Federal Benefits

If the Board receives evidence of a change in the entitlement of a dependent widow or widower to federal benefits, the amount of federal benefits deducted from the compensation for that dependant is adjusted accordingly. The adjustment takes effect as of the date of the change in federal benefits.

5. Minimum Monthly Benefits

The minimum monthly payment for a dependent widow or widower under this Item is as follows:

| | | | |
|-----------------|---|-------------------|----------|
| January 1, 2007 | — | December 31, 2007 | \$957.21 |
| January 1, 2008 | — | December 31, 2008 | \$980.04 |

If required, earlier figures may be obtained by contacting the Board.

The minimum monthly payment is the actual minimum paid by the Board. Federal benefits are not deducted from this minimum amount.

6. Commencement of Benefits

Benefits under this Item commence on the day after the date of the worker's death.

7. Duration and Recalculation of Benefits

Compensation for a dependent widow or widower is payable for life.

The amount of compensation payable for a dependent widow or widower who is an invalid is recalculated in accordance with Item C8-57.00 if the widow or widower ceases to be an invalid.

PRACTICE

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

| | |
|--------------------------|--|
| EFFECTIVE DATE: | June 30, 2002 |
| AUTHORITY: | Section 1 and sections 17(3)(c) and (d) of the <i>Act</i> . |
| CROSS REFERENCES: | Compensation on the Death of a Worker – Definitions – Meaning of “Dependant” and Presumptions of Dependency (Item C8-53.00), Compensation on the Death of a Worker – Definitions – Meaning of “Child” or “Children” (Item C8-53.10), Compensation on the Death of a Worker – Definitions – Meaning of “Federal Benefits” (Item C8-53.20), Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit (Item C8-56.70) and Compensation on the Death of a Worker – Recalculation of Compensation on a Change in Circumstances (Item C8-57.00) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | Replaces policy items #55.23, #55.30, #55.31, #55.32 and #55.33 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| APPLICATION: | This Item applies to the death of a worker on or after June 30, 2002. |

**RE: Compensation on the Death of a Worker
Calculation of Compensation - Children****ITEM: C8-56.40**

BACKGROUND

1. Explanatory Notes

This policy describes how compensation as a result of a worker's death is calculated for dependent children.

2. The Act

Section 17:

- (3) Where compensation is payable as the result of the death of a worker or of injury resulting in such death, compensation must be paid to the dependants of the deceased worker as follows:
 - (f) where there is no surviving spouse or common law spouse eligible for monthly payments under this section, and
 - (i) the dependant is a child, a monthly payment of a sum that, when combined with 50% of the federal benefits to or for that child, would equal 40% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability;
 - (ii) the dependants are 2 children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those children, would equal 50% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; or
 - (iii) the dependants are 3 or more children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those children, would equal the total of
 - (A) 60% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; and

- (B) \$303.29 per month for each child beyond 3 in number,

subject, in all cases, to the minimum set out in paragraph (g).

- (g) the minimum allowances payable under paragraphs (a), (b) and (f) must be the allowances that would be payable if the allowances were calculated under those paragraphs in respect of a deceased worker with average earnings of \$32,673.61 per annum.

POLICY

Children who were not wholly or partly dependent on the worker's earnings at the time of the worker's death are not entitled to compensation under this Item. They may, however, be entitled under Item C8-56.70.

1. Calculation of Compensation – Surviving Spouse or Common-Law Wife/Husband

Where there is a surviving spouse, common-law wife or common-law husband eligible for periodic benefits, the children's benefits are calculated in conjunction with those of the spouse, common-law wife or common-law husband under Items C8-56.00, C8-56.20 or C8-56.30. With one exception, this is so whether the children live with the spouse, common-law wife or common-law husband or not. Where they live apart, the apportionment provisions described in Item C8-58.00 may be applied to the benefits. The exception involves item C8-56.20, which applies to children only when they are living with the separated spouse at the date of the worker's death.

Where there is a widow or widower and a child or children, and the widow or widower subsequently dies, benefits for the dependent children are recalculated under Item C8-57.00.

2. Calculation of Compensation – No Surviving Spouse or Common-Law Wife/Husband

Where there is no surviving spouse or, common-law wife or common-law husband eligible for monthly payments under section 17 of the *Act*, benefits for any dependent children are calculated as described below.

2.1 One Dependent Child

The monthly payment for one dependent child is calculated as the difference between:

- (a) 40% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; and
- (b) 50% of the federal benefits payable to or for that child.

2.2 Two Dependent Children

The monthly payment for two dependent children is calculated as the difference between:

- (a) 50% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; and
- (b) 50% of the federal benefits payable to or for those children.

2.3 Three or More Dependent Children

The monthly payment for three or more dependent children is calculated as follows:

- (I) The Board adds:
 - (a) 60% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; and
 - (b) the following amount per month for each child beyond three in number:

| | | | |
|-----------------|---|-------------------|----------|
| January 1, 2007 | — | December 31, 2007 | \$296.22 |
| January 1, 2008 | — | December 31, 2008 | \$303.29 |

If required, earlier figures may be obtained by contacting the Board.

- (II) The Board then deducts 50% of the federal benefits payable to or for those children from the sum determined above.

3. Change in Federal Benefits

If the Board receives evidence of a change in a dependant child's entitlement to federal benefits, the amount of federal benefits deducted from the compensation for that child is adjusted accordingly. For instance, if the Board receives evidence that a child's benefits under the Canada Pension Plan have been terminated, the amount of federal benefits deducted from the compensation for that child will be adjusted. The adjustment takes effect as of the date of the change in federal benefits.

4. Minimum Monthly Benefits

The minimum monthly payment under this Item must not be less than the amount that would be payable if, at the date of death, the deceased worker had the following average earnings:

| | | | |
|-----------------|---|-------------------|-------------|
| January 1, 2007 | — | December 31, 2007 | \$31,912.40 |
| January 1, 2008 | — | December 31, 2008 | \$32,673.61 |

If required, earlier figures may be obtained by contacting the Board.

5. Recalculation

Benefits for dependent children are recalculated in accordance with Item C8-57.00 as each child ceases to meet the requirements, described in Item C8-53.10, to be eligible for compensation as a “child” of the deceased worker.

6. Foster Parents

Where a foster parent assumes responsibility for the care and maintenance of a deceased worker’s dependent child or children, the Board may pay compensation to the foster parent and children under Item C8-56.50. If the Board pays compensation under Item C8-56.50, no compensation is provided for the child or children under this Item.

7. Commencement of Benefits

Benefits under this Item commence on the day after the date of the worker’s death.

PRACTICE

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

EFFECTIVE DATE:

June 30, 2002

AUTHORITY:Sections 17(3)(f) and (g) of the *Act*.

CROSS REFERENCES:

Compensation on the Death of a Worker – Definitions – Meaning of “Dependant” and Presumptions of Dependency (Item C8-53.00), Compensation on the Death of a Worker – Definitions – Meaning of “Child” or “Children” (Item C8-53.10), Compensation on the Death of a Worker – Definitions – Meaning of “Federal Benefits” (Item C8-53.20), Compensation on the Death of a Worker – Calculation of Compensation – Widow or Widower with Children (Item C8-56.00), Compensation on the Death of a Worker – Calculation of Compensation – Spouse Separated from Deceased Worker (Item C8-56.20), Compensation on the Death of a Worker – Calculation of Compensation – Common-Law Relationships (Item C8-56.30), Compensation on the Death of a Worker – Calculation of Compensation – Foster Parents (Item C8-56.50), Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit (Item C8-56.70), Compensation on the Death of a Worker – Recalculation of Compensation on a Change in Circumstances (Item C8-57.00) and Compensation on the Death of a Worker – Apportionment of Compensation (Item C8-58.00) of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY:

Replaces policy items #58.00, #58.21 and #58.22 of the *Rehabilitation Services & Claims Manual*, Volume II.

APPLICATION:

This Item applies to the death of a worker on or after June 30, 2002.

**RE: Compensation on the Death of a Worker
Calculation of Compensation –
Other Dependants and Dependent Parents**

ITEM: C8-56.60

BACKGROUND

1. Explanatory Notes

This policy describes the calculation of compensation for “other dependants” and dependent parents of a deceased worker.

2. The Act

Section 17:

- (3) Where compensation is payable as the result of the death of a worker or of injury resulting in such death, compensation must be paid to the dependants of the deceased worker as follows:
- (h) where there is
 - (i) no dependent spouse or child entitled to compensation under this section, but a worker leaves other dependants, a sum reasonable and proportionate to the pecuniary loss suffered by those dependants by reason of the death, to be determined by the Board, but not exceeding in the whole \$536.77 per month for life or a lesser period as determined by the Board; or
 - (ii) a dependent spouse, or a dependent child or children, entitled to compensation under this section, but not a spouse and child or children, and, in addition, the worker leaves a dependent parent or parents, then, in addition to the compensation payable to the spouse or children, a sum, reasonable and proportionate to the pecuniary loss suffered by the dependent parent or parents by the death, to be determined by the Board, but not exceeding \$536.77 per month for life or a lesser period as determined by the Board.

POLICY

In this Item, the term “spouse” means a “widow”, “widower”, “common-law wife” or “common-law husband”.

1. Dependent Spouse and Children

If both a dependent spouse and children of the deceased worker are eligible for benefits as a result of the worker’s death, no other person is entitled to compensation for the death, other than funeral and transportation expenses under Item C8-54.00.

2. Other Dependants

Where there is neither a dependent spouse nor children entitled to benefits as a result of a worker’s death, compensation is payable to “other dependants” of the deceased worker.

The term “other dependants” means any of the following members of the worker’s family who were wholly or partly dependent on the worker’s earnings at the time of the worker’s death:

- father, mother, stepfather, stepmother;
- person who stood in loco parentis to the worker, whether or not the person is related to the worker;
- grandfather, grandmother;
- son, daughter who does not meet the requirements under Item C8-53.10 to be eligible for compensation as a “child” of the deceased worker;
- grandson, granddaughter;
- stepson, stepdaughter who does not meet the requirements under Item C8-53.10 to be eligible for compensation as a “child” of the deceased worker;
- brother, sister, half-brother, half-sister; and
- person to whom the worker stood in loco parentis, whether or not the person is related to the worker, and who does not meet the requirements under Item C8-53.10 to be eligible for compensation as a “child” of the deceased worker.

Except in the case of parents, a member of the worker's family who is described in the above list and who was not wholly or partly dependent on the worker's earnings at the time of the worker's death is not entitled to compensation under the *Act*. A parent who was not wholly or partly dependent upon the worker's earnings may still be entitled to compensation under Item C8-56.70.

3. Dependent Parents

Where there is either a dependent spouse or a dependent child or children entitled to benefits as a result of a worker's death, but not a spouse and child or children, compensation is payable for the dependent parent or parents of the deceased worker.

The compensation payable to a dependent parent is in addition to the compensation payable to a dependent spouse or to a dependent child or children as a result of the worker's death.

A parent who was not wholly or partly dependent upon the worker's earnings at the time of the worker's death is not entitled to compensation under this Item. The parent may, however, be entitled to compensation under Item C8-56.70.

4. Calculation of Compensation

Compensation for a dependant under this Item is a sum determined by the Board to be reasonable and proportionate to the pecuniary loss suffered by the dependant as a result of the worker's death.

In determining the appropriate amount of compensation, the Board considers the amount of financial support that the dependant had been receiving from the worker at the date of the worker's death, or at the date of the injury resulting in death. The Board also considers the number of dependants eligible for compensation under this Item, as well as the maximum amount of compensation payable, as set out below.

The total amount of compensation payable for all dependants under this Item, taken together, must not exceed the following amount:

| | | | |
|-----------------|---|-------------------|----------|
| January 1, 2007 | — | December 31, 2007 | \$524.26 |
| January 1, 2008 | — | December 31, 2008 | \$536.77 |

If required, earlier figures may be obtained by contacting the Board.

5. Commencement of Benefits

Benefits under this Item commence on the day after the date of the worker's death.

6. Duration of Benefits

Compensation under this Item may be for life or for a lesser period as determined by the Board. For instance, the worker's grandchild might have been dependent upon the worker's earnings for payment of tuition fees. In such a case, the Board may determine that benefits should be terminated when the grandchild ceases to attend school.

PRACTICE

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

| | |
|--------------------------|---|
| EFFECTIVE DATE: | June 30, 2002 |
| AUTHORITY: | Section 17(3)(h) of the <i>Act</i> . |
| CROSS REFERENCES: | Compensation on the Death of a Worker – Definitions – Meaning of “Dependant” and Presumptions of Dependency (Item C8-53.00), Compensation on the Death of a Worker – Definitions – Meaning of “Child” or “Children” (Item C8-53.10), Compensation on the Death of a Worker – Funeral and other Death Expenses (Item C8-54.00) and Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit (Item C8-56.70) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | Replaces policy items #59.00 and #59.10 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| APPLICATION: | This Item applies to the death of a worker on or after June 30, 2002. |

**RE: Compensation on the Death of a Worker
Calculation of Compensation –
Persons with a Reasonable Expectation
of Pecuniary Benefit**

ITEM: C8-56.70

BACKGROUND

1. Explanatory Notes

This policy describes how compensation as a result of a worker's death is calculated for a person who, though not dependent upon the worker's earnings, had a reasonable expectation of pecuniary benefit from the worker.

2. The Act

Section 17:

- (3) Where compensation is payable as the result of the death of a worker or of injury resulting in such death, compensation must be paid to the dependants of the deceased worker as follows:
- (i) where
 - (i) no compensation is payable under the foregoing provisions of this subsection; or
 - (ii) the compensation is payable only to a spouse, a child or children or a parent or parents,

but the worker leaves a spouse, child or parent who, though not dependent on the worker's earnings at the time of the worker's death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker, payments, at the discretion of the Board, to that spouse, child or children, parent or parents, but not to more than one of those categories, not exceeding \$536.77 per month for life or a lesser period determined by the Board.

POLICY

1. Persons with a Reasonable Expectation of Pecuniary Benefit

This Item applies where

- (a) no compensation is payable to a dependant of the deceased, or
- (b) the compensation is payable only to a spouse, a child or children, or a parent or parents,

but the worker leaves a spouse, child or children, or parent or parents who, though not dependent upon the worker's earnings at the time of death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker.

A reasonable expectation of pecuniary benefit requires more than an assumption that the person would have received a financial benefit from the worker if the worker had not died. There must be objective evidence that the worker would have provided an actual monetary benefit to the spouse, child or parent if he or she had not died.

Compensation may be payable to persons with a reasonable expectation of pecuniary benefit in only one of the following categories:

- (a) spouse of the deceased worker;
- (b) child or children of the deceased worker; or
- (c) parent or parents of the deceased worker.

An application for compensation from a spouse, child or parent, on the grounds that he or she is a dependant of the deceased worker will automatically be considered under this Item if it is concluded that the person was not wholly or partly dependent upon the worker's earnings at the time of the worker's death.

2. Calculation of Compensation

Compensation under this Item is determined at the Board's discretion. However, monthly payments must not exceed the following amount:

| | | | |
|-----------------|---|-------------------|----------|
| January 1, 2007 | — | December 31, 2007 | \$524.26 |
| January 1, 2008 | — | December 31, 2008 | \$536.77 |

If required, earlier figures may be obtained by contacting the Board.

3. Commencement of Benefits

Benefits under this Item commence on the day after the date of the worker's death.

4. Duration of Benefits

Compensation under this Item may be for life or for a lesser period as determined by the Board. For instance, before death the worker may have given a promissory note to a parent, undertaking to repay a loan with interest. In such a situation, the Board would not provide benefits for life because the parent's expectation of pecuniary benefit was not a lifelong expectation.

PRACTICE

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

| | |
|--------------------------|---|
| EFFECTIVE DATE: | December 31, 2003 |
| AUTHORITY: | Section 17(3)(i) of the <i>Act</i> . |
| CROSS REFERENCES: | Compensation on the Death of a Worker – Definitions – Meaning of “Dependant” and Presumptions of Dependency (Item C8-53.00) and Compensation on the Death of a Worker – Definitions – Meaning of “Child” or “Children” (Item C8-53.10) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | Replaces policy item #60.00 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| APPLICATION: | This Item applies to the death of a worker on or after December 31, 2003. |

EFFECTIVE DATE: March 18, 2003 (as to where the maximum and minimum wage rate figures may be obtained)
APPLICATION: Not applicable.

#67.30 Workers with No Earnings

Section 33.7 of the *Act* provides:

If a worker had no earnings at the time of injury, the Board must determine the amount of average earnings of a worker under section 33.1 from the date of injury in a manner that the Board considers appropriate.

This is an exception to both general rules for determining average earnings. There is no 10-week average earnings review.

Persons working without pay are not generally considered as “workers” under the *Act*. However, there are some exceptional situations of this type which are covered and for which the *Act* or the Board has specified the earnings on which compensation is to be based. These situations are described in policy items #67.31 - #67.34.

#67.31 *Volunteer Workers Admitted by the Board under Section 3(5)*

Where a person who is deemed to be a worker under section 3(5) of the *Act* is not regularly employed, and having regard to all the circumstances, including income, the Board may fix the worker’s average earnings at not less than the amount set out below per week nor more than the maximum wage rate provided under section 33 of the *Act*.

| | | | |
|-----------------|---|-------------------|----------|
| January 1, 2007 | — | December 31, 2007 | \$112.67 |
| January 1, 2008 | — | December 31, 2008 | \$115.36 |

If required, earlier figures may be obtained by contacting the Board.

The minimum wage set out above is subject to cost of living adjustments as described in policy item #51.20.

#67.32 *Volunteer Firefighters and Ambulance Drivers and Attendants*

The average earnings of volunteer ambulance drivers and attendants and members of fire brigades working without remuneration is deemed to be the same in amount as the average earnings in their regular employment or

employments, not, however, to be less than the amount on which the employer has been assessed. (7)

In order to provide a minimum level of coverage to volunteers who have no attachment to the labour force, the employer is assessed \$75.00 per month (\$17.30 per week) for each person, unless the municipality concerned has arranged with the Board for, or pays the claimant, a higher amount. Compensation is based on this rate unless or until wages are confirmed as being lost at another job. In the latter case, the rate can be increased to the rate on the job, but the \$17.30 cannot be combined with it. If the volunteer is unemployed, but has an attachment to the labour force in the sense that the volunteer is seeking employment, wage-loss benefits are determined on the average earnings from the last regular employment. The fact that the volunteer is collecting Employment Insurance benefits confirms for compensation purposes an attachment to the labour force. The 12 months immediately preceding the volunteer's date of injury will be used to determine the level of benefits. See policy item #68.40 with respect to employment insurance income and the composition of average earnings. If a firefighter is paid wages by the fire brigade these can be combined with earnings from another job, but not to exceed the maximum wage rate.

Volunteer firefighters who have no attachment to the labour force such as a retired person or someone in receipt of welfare payments would not generally have a loss of wages as a result of an injury. Claims for these individuals are paid on the basis of a \$75.00 per month assessment figure or greater where the municipality arranges a higher valuation on the volunteer services.

There will be circumstances which do not fall squarely within these guidelines. When that occurs, the decision on what best represents the loss of earnings must be decided upon by the Board officer according to the merits and justice of the particular case.

Firefighters, other than those referred to in the policies in Items AP1-1-5 and AP1-38-3 of the *Assessment Manual* or firefighters whose employers are not covered by Part 1 of the *Act*, but to whom personal optional protection has been given, are to be assessed and paid on the same basis as above.

EFFECTIVE DATE: March 18, 2003 (as to numerical references to the policies in Items AP1-1-5 and AP1-38-3 in the *Assessment Manual*)

APPLICATION: Not applicable.

#67.33 *Sisters in Catholic Institutions*

Claims are occasionally received for teaching or nursing sisters of Catholic institutions. If they are being paid wages they are treated as regular workers and compensated on the basis of their actual earnings. If no wages are being paid,

#69.00 **MAXIMUM AMOUNT OF AVERAGE EARNINGS**

Section 33(3) provides that a worker's average earnings cannot exceed the "maximum wage rate".

The *Act* contains a special procedure for determining the maximum wage rate in force in any year. Section 33(7) provides that "Prior to the end of each calendar year, the board must determine the maximum wage rate to be applicable for the following calendar year." The maximum wage rate to be determined under subsection (7) is an amount that the Board thinks represents the same relationship to the sum of \$40,000 as the annual average of wages and salaries in the province for the year preceding that in which the determination is made bears to the annual average of wages and salaries for the year 1984; and the resulting figure is rounded to the nearest \$100. (10) For the purpose of determining annual average of wages and salaries under subsection (8), the Board may use data published or supplied by Statistics Canada. (11) Prior to 1986, the *Act* referred to \$11,200 and 1972 as the factors in the formula for calculating the maximum.

For the maximum wage rates in force used to calculate temporary and permanent disability payments, see below.

| | Yearly Applicable |
|-------------------------------------|------------------------------|
| January 1, 2007 – December 31, 2007 | \$64,400.00 |
| January 1, 2008 – December 31, 2008 | \$66,500.00 |

If required, earlier figures may be obtained by contacting the Board.

The maximum wage rate is not subject to consumer price index adjustments. Nor can a worker who is in receipt of the current maximum compensation benefits receive the benefit of such adjustments. However, if the maximum wage rate is increased in any year, workers injured in a prior year who were limited by the maximum compensation for that year can receive the benefit of any applicable cost of living adjustments occurring after the increase. Such adjustments are calculated using the previous maximum as a base and cannot at any time increase the worker's compensation above the current maximum.

Increases in the maximum wage rate do not have the effect of increasing the existing compensation being paid to workers whose payments have been limited by the lower maximum existing in a previous year. An exception to this rule may occur when, on a reopening occurring more than three years after the injury, the Board exercises its authority under section 32 to base compensation payments on the worker's earnings at the time of the reopening. (12)

Authority to approve increases in the maximum wage rate under section 33 has been assigned to the President.

#69.10 Deduction of Permanent Disability Periodic Payments from Wage Loss

Section 31(1) provides as follows:

Where a worker is receiving compensation for a permanent or temporary disability, the worker must not receive compensation for a further or other disability in an amount that would result in the worker receiving in the aggregate compensation in excess of the maximum payable for total disability.

Where a worker is entitled to wage-loss payments at the current maximum, and is in receipt of a permanent disability award under a previous claim, the permanent disability award is deducted from the wage-loss payments. If the wage-loss payments are less than the current maximum only the amount in excess of the maximum when the permanent disability award and wage loss are added together is deducted.

For calculating the amount of a deduction, the daily rate of the permanent disability award must be determined and then deducted from the daily rate of wage-loss compensation in the manner set out in policy item #70.10.

The deduction made under section 31 must be reviewed on each January 1 following the injury. This is to allow for possible cost of living adjustments to the amount of the permanent disability award and the wage loss and, with regard to January 1, changes in the maximum wage rate. For the purpose of section 31, the relevant maximum is the one applying in the year in which the wage-loss payment is being made.

For the deduction from wage loss of permanent disability awards under the same claim, reference should be made to policy items #70.00, #70.10, and #70.20.

#69.11 *Permanent Disability Award Cash Awards and Term Permanent Disability Awards*

Section 31(2) provides:

Where a worker has received a lump sum in lieu of the periodic payments that otherwise would have been payable for a permanent disability, the worker is, for the purposes of subsection (1), deemed to be still in receipt of the periodic payments.

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, 2007 – June 30, 2008 | \$290.47 | \$582.37 | \$582.37 | \$872.94 |
| Jan. 1, 2008 – Dec. 31, 2008 | \$297.40 | \$596.26 | \$596.26 | \$893.76 |

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 1st 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 1st of each year. This is a full calendar year payment and covers the year of payment. The first payment is made on the January 1st 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 1st of each year.

#80.20 Amounts Payable at Each Level

The amounts of personal care allowances are set out below:

| | Level 1 | Level 2 | Level 3 | Level 4 | Level 5 |
|-------------------------------------|----------|----------|------------|------------|------------|
| 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 |
| January 1, 2008 – December 31, 2008 | | | | | |
| Daily Amount | \$15.08 | \$25.70 | \$38.23 | \$49.49 | \$61.03 |
| Monthly Amount | \$453.99 | \$794.27 | \$1,147.24 | \$1,487.51 | \$1,828.19 |

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:

| Date | Monthly Amount |
|-------------------------------------|-----------------------|
| January 1, 2007 – December 31, 2007 | \$234.40 |
| January 1, 2008 – December 31, 2008 | \$239.99 |

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.

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:

| Date | Amount Per Kilometre |
|-------------------------------------|---------------------------------|
| January 1, 2007 – December 31, 2007 | 34¢ |
| January 1, 2008 – December 31, 2008 | 35¢ |

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 addition to accommodation costs, the worker will be paid a full or partial per diem meal allowance as follows:

| Date | Breakfast | Lunch | Dinner | Per Day |
|-------------------------------------|-----------|---------|---------|---------|
| January 1, 2007 – December 31, 2007 | \$10.98 | \$13.54 | \$23.27 | \$47.79 |
| January 1, 2008 – December 31, 2008 | \$11.24 | \$13.86 | \$23.83 | \$48.93 |

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.

Expenditures

When it is decided to support a formal training program related directly to the disability, the assistance provided under section 16(1) of the *Act* will normally include:

1. Training allowances at wage-loss equivalency when enrolled in a full-time program.
2. Tuition fees and any necessary books, materials or equipment.
3. Travel and subsistence where appropriate.

When it is decided to support a formal training program related partly to the disability, the Board will estimate the total expenditure that would otherwise have been incurred under section 16(1) of the *Act*. The worker will then be offered that amount as a contribution to the cost of the preferred program. This contribution will normally be paid by installments for the duration of the program. The installments will be subject to cost-of-living adjustments using the formula provided in section 25 of the *Act*.

Injury in the Course of Training

A worker undergoing a course of rehabilitation training sponsored by the Board does so in the circumstances described below:

1. The trainee may be attending a school of training specifically operated as such and for which course of training the Board pays a fee to the school, while at the same time paying the trainee the allowance prescribed by Board regulations.
2. A trainee may, by arrangement, be receiving training in an industrial or business establishment, receiving no remuneration from the employer in the establishment, but only receiving the allowance prescribed by Board regulations. At the same time, the Board may be paying something by way of a training fee to the employer in the establishment.

In the above circumstances, the Board takes the position that the trainee is not a "worker" employed by the participating employer in the course of rehabilitation training. Should the trainee receive further injury in the course of training, the Board regards such further injury as a continuation of the original disability. The two main objectives are:

1. that the injured trainee shall receive compensation benefits under the *Act*, and
2. that an employer who cooperates and assists the Board in rehabilitating an injured worker shall not be penalized for so doing.

In case of an aggravation or new injury to a trainee, the Board will normally exclude the costs from the employer's experience rating. In addition, the employer's sector or rate group may be eligible for relief under section 39(1)(e).

The above policy applies whether the employer at the time is a new employer or the worker's original employer.

Joint Sponsorship

Where a worker is undertaking a training program sponsored by another agency, and:

1. the circumstances are such that a similar program would have been supported by the Board, and
2. the level of support provided by the other agency is less than would have been provided by the Board,

the Board will provide support to the extent of the difference.

PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WorkSafeBC website.

| | |
|--------------------------|--|
| EFFECTIVE DATE: | November 1, 2002 |
| AUTHORITY: | Section 16 of the <i>Act</i> . |
| CROSS REFERENCES: | Education (policy item #45.44), Transportation Allowances (policy item #82.00), Subsistence Allowances (policy item #83.00), Vocational Rehabilitation - Process (Item C11-87.00), Vocational Rehabilitation - Nature and Extent of Programs and Services (Item C11-88.00), Vocational Rehabilitation - Preventative Rehabilitation (Item C11-88.80), Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability (policy item #114.40), and Experience Rating (policy item #115.30) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |

**RE: Changing Previous Decisions –
Reopenings**

ITEM: C14-102.01

BACKGROUND

1. Explanatory Notes

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

2. The Act

Section 96 states, in part:

.....

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

- (3) If the Board determines that the circumstances in subsection (2) justify a change in a previous decision respecting compensation or rehabilitation, the Board may make a new decision that varies the previous decision or order.

.....

POLICY

(a) General

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

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

(b) A reopening is not a reconsideration

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

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

(c) Grounds for reopening

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

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

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

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

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

(d) Recurrence of injury

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

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

This provision permits the Board to transfer the costs of a claim from the class of the worker's employer to the class of another employer in certain circumstances. The requirements of such a transfer are discussed below.

#114.11 *The Amount of Compensation Awarded Must Be Substantial*

The Board has interpreted the word "substantial" as referring to a specific dollar amount. The amounts are set out below:

| | |
|-------------------------------------|-------------|
| January 1, 2007 – December 31, 2007 | \$41,050.71 |
| January 1, 2008 – December 31, 2008 | \$42,029.90 |

If required, earlier figures may be obtained by contacting the Board.

Effective June 30, 2002, the dollar amount 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.

#114.12 *Serious Breach of Duty of Care of Another Employer Must Have Caused or Substantially Contributed to Injury*

"Duty of care" has the same meaning as it does in the law of tort. It is therefore relevant to consider what conclusions a court of common law would come to if a claim for damages for personal injury were brought by the worker against the other employer. The basic question considered is whether there was a failure to take reasonable care. The mere fact that the employer may have violated the Occupational Safety and Health Regulations is not sufficient since they often impose strict liability.

The doctrine of vicarious liability has no application to section 10(8), and a transfer of costs is only available where the breach of duty of care consisted of acts or omissions by management personnel who can be identified as the employer, and not to cases where the breach of duty consists only of the act or omissions of other workers.

If there has been a breach of duty of care by the employer, the next question to be considered is whether it was a "serious" one. The word "serious" refers to the culpability of the employer's behaviour rather than the consequences of that behaviour. Regard will be had to the probability of injury resulting from the breach and the predictable gravity of the likely consequences of such an injury.

The fact that the worker was negligent does not necessarily mean that the employer's breach of duty did not cause or substantially contribute to the injury. Lapses of attention are a normal part of ordinary human behaviour that should be foreseen and guarded against.

#114.13 *Discretion of the Board*

The Board has a discretion where the requirements set out in policy items #114.10 – 12 are satisfied to transfer all or part of the cost of a claim. In exercising this discretion, the Board takes no account of any contributory negligence by the worker.

#114.20 **Depletion or Extinction of Industries or Classes**

Section 39(1)(b) requires the Board to “provide a reserve in aid of industries or classes which may become depleted or extinguished; ...”

Employers may apply to have the costs of a claim transferred from their class to that fund. This provision is very rarely used.

#114.30 **Disasters or Other Circumstances which Unfairly Burden a Rate Group**

Section 39(1)(d) requires the Board to “provide a reserve ... to meet the loss arising from a disaster or other circumstances which the Board considers would unfairly burden the employers in a class.”

Costs will not be charged to the fund created by section 39(1)(d) because there is an unfair burden on an individual employer. The unfair burden must be on a rate group or industry group of employers.

Each deposit account employer forms a classification unit, which is treated as a self-funded rate group by itself. This does not automatically mean that a burden on the deposit account employer is a burden on the rate group. The relief available to deposit accounts under section 39(1)(d) is limited to the same sorts of situations as for other employers.

The Federal Government does not contribute to the Accident Fund, therefore no relief of costs under this section can be made where the Federal Government is recorded as the injury employer.

If a worker suffers a compensable personal injury (including mental stress or occupational disease), and there is no evidence of any pre-existing disease, condition or disability, section 39(1)(e) does not apply. The fact that a disability has been enhanced by factors other than a pre-existing disease, condition or disability is not a ground for relief under section 39(1)(e).

2. Was the worker's compensable disability enhanced by reason of a pre-existing disease, condition or disability, and if so, to what extent?

“Enhanced” can mean either the prolongation of recovery or the extent to which the compensable disability is made worse, due to the pre-existing disease, condition or disability.

Evidence that may be considered in determining the degree of prolongation or worsening of a disability includes:

- medical opinion regarding the “normal” recovery time for the particular type of injury;
- medical opinion regarding the “normal” post-surgical recovery time;
- the requirement of additional health care services (physiotherapy, hospitalization, etc.); and
- medical evidence contained on the claim.

All relevant factors are considered in the decision-making process.

Where the severity of the compensable accident, incident or exposure was relatively minor, but there is evidence that the recovery period was prolonged, or the temporary or permanent disability was made worse, by reason of a pre-existing disease, condition or disability, cost relief under section 39(1)(e) will clearly be applicable.

3. How severe was the incident initiating the claim in question?

Where there is confirmation of a pre-existing disease, condition or disability of a minor degree, but the incident which precipitated the compensable claim was of a severe nature, cost relief under section 39(1)(e) will not normally be applicable.

Since section 39(1)(e) specifically refers to the enhancement of “disability”, it has no application in fatal cases or in cases where only health care benefits are payable.

4. Determining Amount of Cost Relief

After it has been determined that a pre-existing disease, condition or disability has enhanced the compensable disability, the Board then determines the amount of cost relief to be granted to an employer.

The grid below is one tool that may be used to determine the amount of cost relief to be granted to an employer. It plots the medical significance of the pre-existing disease, condition or disability against the severity of the accident, incident or exposure resulting in the compensable disability.

| Medical Significance of Pre-existing Disease, Condition or Disability | Severity of Accident, Incident or Exposure | Percentage of Cost Relief |
|--|---|----------------------------------|
| Minor | Minor | 50% |
| | Moderate | 25% |
| | Major | 0% |
| Moderate | Minor | 75% |
| | Moderate | 50% |
| | Major | 25% |
| Major | Minor | 90-100% |
| | Moderate | 75% |
| | Major | 50% |

Medical Significance

A determination of the medical significance of the pre-existing disease, condition or disability is based on a review of the medical evidence and, where applicable, an opinion from a Board Medical Advisor.

Severity

The severity of the accident, incident or exposure is generally determined by a review of the factual evidence, including the mechanics of the injury, the activity the worker was undertaking at the time of the injury and the conditions of the worksite.

The following definitions will assist in assessing the severity of the accident, incident or exposure:

- (10) Ratio of the estimated difference in earnings to the B.C. average wage in the year age 65 was attained, i.e. $(9)/(6)$. _____ 10)
(4 decimals)
- (11) Estimated average monthly wage for B.C. in the year of adjustment (see Supplement No. 1). _____ 11)
- (12) Projection of estimated monthly wage loss in the year age 65 was attained to the date of adjustment, i.e., $(10) \times (11)$. _____ 12)
- (13) Total work months disabled due to compensable disability, i.e., 12 months/year $\times (2)$. _____ 13)
- (14) Lifetime lost earnings to age 65 expressed in terms of most recent dollars, i.e., $(12) \times (13)$. _____ 14)
- (15) Deemed total disability pension payments to age 65 = deemed current pension (including term pensions expiring at age 65) $\times (13)$. _____ 15)
- (16) Net lifetime lost income, i.e., $(14) - (15)$. _____ 16)
- (17) Projected monthly loss of retirement income from reduced savings, i.e., $0.0005 \times (16)$. _____ 17)

THE FIGURE SHOWN AS ITEM (17) IS TRANSFERRED TO ITEM (d) ON THE CALCULATION SHEET FOR WORKERS 65 AND OVER.

SUPPLEMENT NO. 5

MONTHLY REDUCTION OF POST-RETIREMENT EARNING CAPACITY

- (1) Percentage of total disability that would be awarded at the date of the adjustment for the disability sustained by the applicant. % _____ 1)
- (2) Monthly allowance for loss of earning capacity from the disability.
\$0.80 for each 1% of total disability, i.e.,
\$0.80/per 1% x (1). \$ _____ 2)

THIS FIGURE SHOWN AS ITEM (2) IS TRANSFERRED TO ITEM (e) ON THE CALCULATION SHEET FOR WORKERS AGED 65 AND OVER.

The cash figure in Item (2) will be adjusted with the Consumer Price Index, the first such adjustment being made on July 1, 1976.

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.

Rates

| | | |
|-----------------|---|--------------------|
| January 1, 2007 | – | \$2.97 for each 1% |
| January 1, 2008 | – | \$3.04 for each 1% |

If required, earlier figures may be obtained by contacting the Board.

APPENDIX 6

MAXIMUM FINES FOR COMMITTING OFFENCES UNDER THE ACT

Part 1 – Offences for which No Other Punishment is Provided – #47.20, #74.10, #94.15, #95.30, #98.12, #99.00

Section 77(2) provides that “Every person who commits an offence under this *Act* for which no other punishment has been provided is liable on conviction to a fine not exceeding . . .” the amount set out below.

| | Date | Amount |
|-----------------|---------------------|---------------|
| January 1, 2007 | – December 31, 2007 | \$4,506.62 |
| January 1, 2008 | – December 31, 2008 | \$4,614.12 |

If required, earlier figures may be obtained by contacting the Board.

Part 2 – Maximum Fine for Discouraging Worker from Reporting to Board – Section 13(2) – #94.20

| | Date | Employer | Supervisor |
|-----------------|---------------------|-----------------|-------------------|
| January 1, 1998 | – June 30, 1998 | \$18,745.52 | \$3,749.15 |
| July 1, 1998 | – December 31, 1998 | 18,815.01 | 3,763.05 |
| January 1, 1999 | – June 30, 1999 | 18,936.62 | 3,787.37 |
| July 1, 1999 | – December 31, 1999 | 19,127.72 | 3,825.59 |

If required, earlier figures may be obtained by contacting the Board.

Part 3 – Maximum Fine for Obstructing Board in Investigation – Section 71(8) – #98.11

| | Date | Maximum Amount |
|-----------------|---------------------|-----------------------|
| July 1, 1998 | – December 31, 1998 | \$18,815.01 |
| January 1, 1999 | – June 30, 1999 | 18,936.62 |
| July 1, 1999 | – December 31, 1999 | 19,127.72 |

If required, earlier figures may be obtained by contacting the Board.