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Update 2008 – 3

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

This update of the *Rehabilitation Services & Claims Manual* contains amendments to the *Manual* implemented since update 2008 – 2.

This package contains housekeeping amendments to:

- Item C14-102.01, *Changing Previous Decisions - Reopenings*

The amended pages, **effective February 1, 2008**, are included as part of this 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
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Attachments

Rehabilitation Services & Claims Manual, Volume II

SUMMARY OF AMENDMENTS – Update 2008 – 3

Chapter 14 Pages 1 to 5

Item C14-102.01

**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 reached 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; and

- an additional period of temporary disability benefits where a permanent disability award was previously provided in respect of the compensable injury.

An example of a recurrence of an injury is where a worker has a compensable injury for which temporary disability benefits are paid. The injury resolves and the claim is closed, but later becomes disabling again without any intervening new injury. In these situations it is considered that the original injury has recurred. The result is that the worker may be entitled to an additional period of temporary and/or consideration for permanent disability compensation under the original claim.

A recurrence of injury that entitles a worker to request a reopening of an existing claim is to be distinguished from a new injury that entitles the worker to make a new claim.

For example, where a compensable injury is aggravated by a second compensable injury, the first injury has not “recurred”. Rather a new injury has occurred that will result in a new claim. The decision whether to reopen the existing claim or initiate a new claim will depend upon the evidence in each case.

The following types of questions may assist in determining whether there is a recurrence or a new injury:

- Have there been any intervening incidents, work-related or otherwise?
- Has there been a continuity of symptoms and/or continuity of medical treatment?
- Can the current symptoms be related to the original injury?

(e) Reopening on application or on own initiative

Section 96(2) sets out the two ways in which the Board may reopen a matter that has been previously decided by the Board: on its own initiative, or on application.

A request for a reopening of a previous decision will be considered on application where the worker refers specifically to section 96(2) of the *Act* or uses language substantially similar to that section. An application may be submitted to the Board in written or verbal form.

A reopening request will not be considered on application where:

- a worker makes a general request for additional wage-loss benefits, health care benefits, vocational rehabilitation services or permanent disability benefits;

- a worker makes a request for a reconsideration and/or the acceptance of a new injury or occupational disease;
- a request is made by a person other than the worker, employer or their authorized representative;
- information is submitted to the Board such as medical reports received from a worker's doctor; or
- the Board has made a decision to reopen a matter on its own initiative as part of the ongoing adjudication of a claim.

(f) Right to request a review

Section 96.2(2)(g) of the *Act* provides that no request may be made to a review officer under section 96.2(1) to review a decision to reopen or not to reopen a matter on an application for a reopening under section 96(2). Section 240(2) provides that a decision to reopen or not to reopen a matter on an application may be appealed directly to the Workers' Compensation Appeal Tribunal ("WCAT").

The effect of these provisions is that the preliminary or threshold question whether the grounds for a reopening on an application have been met under section 96(2)(a) and (b) may not be the subject of a review by a review officer. A party who wishes to dispute the Board's decision in this respect must appeal directly to the WCAT.

However, where a reopening consideration was undertaken on the Board's own initiative, a request for review of the decision is made to a review officer.

Once it is determined that the grounds for a reopening have been met, the Board's decision on the compensation or rehabilitation to be paid or provided as a result of the reopening may be the subject of a request for a review by a review officer under section 96.2(1). The review officer's decision may then be appealed to the WCAT under section 239(1).

PRACTICE

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

EFFECTIVE DATE: August 1, 2006
AUTHORITY: ss. 96(2), (3), *Workers Compensation Act*



WORKERS' COMPENSATION BOARD OF BC

REHABILITATION SERVICES & CLAIMS MANUAL

- CROSS REFERENCES:** Changing Previous Decisions - General (C14-101.01), Changing Previous Decisions - Reconsiderations (C14-103.01), Changing Previous Decisions - Fraud and Misrepresentation (C14-104.01), Changing Previous Decisions - Reviews (C14-105.01)
- HISTORY:** Consequential amendment to section (d) of policy resulting from changes to policy item #1.03 *Scope of Volumes I and II in Relation to Benefits for Injured Workers* of the *Rehabilitation Services & Claims Manual* Volume II made effective August 1, 2006.
Housekeeping amendment to correct numbering effective April 8, 2005.
Amendments effective January 1, 2005 to clarify recurrence of injury and to distinguish between a reopening on application and a reopening on own initiative.
Amendments effective March 18, 2003 to clarify that a reopening allows compensation or rehabilitation benefits to be "varied" and that disputes over a decision to reopen or not to reopen a matter "on application" are appealable directly to WCAT under section 240(2).
New Item consequential to the *Workers Compensation Amendment Act (No. 2)*, 2002 approved effective March 3, 2003.
- APPLICATION:** Applies to all decisions on and after January 1, 2005