

## Policy and Research Division

### 2010 – 2012 Policy Priorities

#### Compensation and Occupational Disease Policy Workplan

##### 1. Medical Assistance, Re-write of Chapter 10 of the *RS&CM* – 2009/2010

This project involves a review of the 87 policies contained in Chapter 10 of the *Rehabilitation Services and Claims Manual*, Volume II ("*RS&CM*"). The re-write of the Chapter 10 policies consists of putting the policies into the new format and addressing various issues that have been raised, such as:

- Other Health Care Providers – re-writing policy to reflect changes to health care services provided to workers, such as physiotherapy, acupuncture and massage therapy.
- The Prescription of Narcotics and Other Drugs of Addiction – review of the current policy to ensure that it reflects the latest medical and scientific information.
- Respite Care – guidance on the provision of respite care is required.
- Review of discretionary allowances and benefits provided to injured workers, such as:
  - (i) those provided to seriously injured workers;
  - (ii) those regarding travel expenses and subsistence, related to workers' receipt of health care; and
  - (iii) those related to childcare and homemaker services.

The key objectives of this project are to improve decision-making, to ensure that health care policies reflect the latest science and latest contracts with health care providers, to ensure that the WCB provides appropriate health care services to aid in recovery and return to work, and to improve customer service in the delivery of health care services. These objectives will be evaluated based on outcomes of Review Division and WCAT decisions, the impact on health care services costs and feedback from WCB staff and external stakeholders.

Considerable work has been undertaken on this project and it is anticipated that draft proposed policies will be released for internal stakeholder consultation in the first quarter of 2010.

##### 2. Compensation for Bronchogenic Carcinoma (Lung Cancer) in Asbestos Exposed Workers – 2009/2010

Schedule B item #4(a) provides a presumption of work causation in favour of a worker who has developed a primary site lung cancer which is associated with either asbestosis or bilateral diffuse pleural thickening, or fibrosis measuring a specified size.

At issue is whether these descriptions are current and supportable based on the most current medical science. Another issue is whether WorkSafeBC should consider the recognition of primary site lung cancers in workers who have had significant exposures to asbestos in British Columbia, but who do not display radiographic evidence of benign asbestos-related pleural or lung disease. This second issue has arisen out of recent studies and reports including the "Report by the Industrial Injuries Advisory Council" (United Kingdom) dated July 2005.

In October 2006, the Research Secretariat released a request for proposals for a systematic review of available literature on bronchogenic carcinoma (Lung Cancer) in asbestos exposed workers. The results of this review will form the basis for a comprehensive analysis and development of WorkSafeBC policy options that could be applied in the adjudication of lung cancer claims.

Consultation on this project is currently underway and it is scheduled for decision in the first quarter of 2010.

### **3. Claims Management Solutions (“CMS”) System – 2010**

It is anticipated that issues will be identified as part of the ongoing development of CMS which will require policy guidance and policy development in order to improve delivery of claims services, increase consistency in decision-making, and enhance business and application efficiency.

### **4. Enhancement/Devaluation – 2009/2010**

This policy project will involve a review of policy items #39.12 and #39.13 of the *RS&CM*. Policy item #39.12 provides that a permanent partial disability award *may be* increased (“enhanced”) in certain situations, for example, disabilities in both arms, or disabilities in both legs. Policy item #39.13 directs that a permanent partial disability award *must be* decreased (“devaluation”) when there are multiple disabilities existing alongside each other in the same part of the body, for example, multiple disabilities to one leg.

The Workers’ Compensation Appeals Tribunal (“WCAT”) has taken a different approach to the application of these policies. At issue is whether these policies should be clarified to ensure consistent application.

The outcome of this project will be evaluated based on Review Division and WCAT decisions and feedback from both WCB staff and external stakeholders.

This issue is scheduled for referral to the Board for approval to consult in January 2010.

### **5. Chronic Pain – Policy Items #22.35 and #39.02 of the *RS&CM* – 2010**

The policies with respect to chronic pain have been in effect since January 1, 2003. A review of these policies is underway in order to evaluate their effectiveness and to improve consistency in the adjudication and management of chronic pain. To date, the following issues have been identified for clarification:

- whether the current fixed 2.5% loss of function award for chronic pain is appropriate;
- how compensation should be provided when chronic pain occurs at multiple sites on the body;
- whether a Pain Disorder diagnosed under the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision* (“DSM-IV-TR”) should be adjudicated as a claim for chronic pain, or as a distinct psychological disability, using the permanent psychological disability schedule; and
- whether the terminology used in the current policies is appropriate.

The outcome of this project will be evaluated by examining the outcomes of Review Division and WCAT decisions, analyzing permanent disability award statistics on chronic pain and reviewing feedback from WCB staff and external stakeholders.

### **6. Duration of Permanent Disability Periodic Payments – Policy Item #41.00 of the *RS&CM* – 2010**

On January 1, 2008, amendments were made to the *Human Rights Code* to eliminate mandatory retirement in British Columbia. A new provision was also added that allows for distinction on the basis of age, where the distinction is permitted or required by another Act or Regulation. An example of this is section 23.1 of the *Workers’ Compensation Act* which contains statutory limits on the duration of compensation payments based on age.

Policy item #41.00 provides guidance on the evidence required to determine whether a worker would have continued to work past age 65. At issue is a review of the policy language to ensure that it is appropriate given the changes to the *Human Rights Code*.

The outcome of this project will be evaluated by examining the outcomes of Review Division and WCAT decisions and reviewing feedback from WCB staff and external stakeholders.

## **7. Provisional Rate – Policy Item #65.04 of the *RS&CM* – 2010**

This policy provides guidance on when to establish a provisional wage rate in situations where there is a delay in obtaining information required to make a decision about a worker's average net earnings. When WorkSafeBC sets a provisional rate on a claim, this is a preliminary determination pending receipt of further information required to determine a worker's average net earnings.

Concerns have been raised that provisional rates are not being considered in situations where WorkSafeBC is determining a worker's the long-term average net earnings at the 10-week point of a claim. At issue is a review of the policy to consider whether additional guidance is required on when a provisional wage rate may be set.

The outcome of this project will be evaluated by examining the outcomes of Review Division and WCAT decisions and reviewing feedback from WCB staff and external stakeholders.

## **8. Room & Board – Policy Item #68.22 of the *RS&CM* – 2009/2010**

This policy provides guidance on when to include the dollar value of room and board in average earnings. Situations have arisen where the provision of room and board changes during the claim and after 75 days has elapsed from the date of the original wage loss decision. This is creating adjudicative problems as workers seek a reconsideration of the original wage loss decision.

At issue is a review of policy item #68.22 to ensure that it is consistent with section 96(5) of the *Act* which provides that the WCB may not reconsider a decision or order if more than 75 days have elapsed since the decision or order was made.

The outcomes of this project will be evaluated by examining the outcomes of Review Division and WCAT decisions and reviewing feedback from WCB staff and external stakeholders.

This issue is scheduled for referral to the BOD for approval to consult in January 2010.

## **9. Experience Rating Exclusions for Subsequent Non-Compensable Incidents – 2010**

Policy item #34.55, *Subsequent Non-Compensable Incidents*, was created as part of the policy project to review Chapter 3 in the *RS&CM*, Volume II, to replace policy item #22.14, *Treatment Unrelated to Injury*. It comes into effect on July 1, 2010. The new policy defines "subsequent non-compensable incident" and directs WorkSafeBC to estimate when a worker's disability resulting from a compensable injury (and therefore the worker's wage-loss benefits) would end, if he or she is disabled when a subsequent non-compensable incident occurs.

When the estimated date for terminating wage-loss benefits arrives, if the worker is still disabled, WorkSafeBC makes a new decision as to whether the disability, or increased disability, is due to the compensable injury or the subsequent non-compensable incident. If the disability is due to the compensable injury, WorkSafeBC may continue to pay wage-loss benefits, even if the reason for the continued disability from the compensable injury is that the subsequent non-compensable incident has delayed the worker's recovery.

At issue is whether an experience rating adjustment under section 42 of the *Act* should be made for employers whose workers' disability from a compensable injury is aggravated, or recovery is delayed, by a subsequent non-compensable incident.

## **10. Mental Stress and *Government Employees Compensation Act* (“*GECA*”) – 2010**

*GECA* provides direction on the provision of workers' compensation for federal government employees. Under *GECA*, compensation is paid to employees who are caused personal injury by an accident arising out of and in the course of employment or who are disabled by reason of an industrial disease due to the nature of the employment. *GECA* does not include a specific entitlement provision on mental stress.

Recent appeal court decisions from the Atlantic Provinces have concluded that the ordinary reading of the definition of accident under *GECA* is sufficiently broad enough to include gradual onset stress. The Review Division has considered the issue of *GECA* and gradual onset stress in four recent appeals. In all cases, the Review Division supported the views taken in the appeal courts decisions referenced above.

At issue is whether specific policy direction is required to guide the adjudication of *GECA* claims for gradual onset stress.

The outcome of this project will be evaluated based on Review Division and WCAT decisions and feedback from both WCB staff and external stakeholders.

## **11. Tinnitus – 2010**

Policy item #31.00, *Hearing Loss*, of the *RS&CM* provides that tinnitus alone is not considered a condition for which a permanent disability award can be granted. However, tinnitus in combination with a permanent degree of hearing loss may have an impact on a worker's employability and affect the amount of the resulting award.

At issue is a review of the current medical and scientific literature related to this condition to determine whether the current policy is appropriate. The PRD has received a systematic review of the medical and scientific literature on this issue. The systematic review is currently undergoing peer review. The PRD expects to receive the peer review report in November of 2009. Based on the findings of the scientific reviews, policy development may be required.

The outcome of this project will be evaluated based on an analysis of the number of claims for tinnitus, Review Division and WCAT decisions and feedback from both WCB staff and external stakeholders.

## **12. Carpal Tunnel/Cubital Tunnel Review – 2010**

Activity related soft tissue disorder (“ASTD”) claims are difficult to adjudicate. Certain ASTDs are recognized under Schedule B of the *Act*, for example shoulder or knee bursitis, while others are set out in policy, such as carpal tunnel syndrome.

At issue is a review of the ASTD policies to ensure that they are consistent with medical science and to improve consistency in decision-making. This review will be undertaken in stages, beginning with a review of the carpal tunnel and cubital tunnel policies.

The Research Secretariat is funding a systematic review on the causal relationship between work-related activities and the development of upper limb nerve entrapment disorders such as carpal tunnel and/or cubital tunnel syndrome. It is anticipated that the systematic review will be completed in late 2009.

Following receipt of the systematic review, policy review will be undertaken to determine what, if any, changes are required to policy items #27.32, *Carpal Tunnel Syndrome* and #27.33, *Other Peripheral Nerve Entrapments and Stenosing Tenosynovitis* of the *RS&CM*.

The outcome of this project will be evaluated based on Review Division and WCAT decisions and feedback from both WCB staff and external stakeholders.

### **13. Permanent Disability Evaluation Schedule (“PDES”) – 2010/2011**

At issue is the ongoing review of the percentages listed on the PDES to ensure that the PDES remains current with emerging medical and scientific knowledge. This issue is complex and will require considerable research and analysis including significant cross-jurisdictional analysis of schedules, methods of application and scientific bases. Included in this project will be a review of the Additional Factors Guidelines to ensure it is also medically current and clear enough to ensure consistency in application.

The key objectives of this review are to ensure that the PDES remains current, to clarify when the Additional Factors Guidelines are referenced and to reduce the number of disputes and appeals that arise on the percentages of disability granted under the PDES. These objectives will be evaluated by examining Review Division and WCAT decisions and reviewing feedback from WCB staff and external stakeholders.

### **14. Average Earnings, Chapter 9 of the *RS&CM* – 2010/2011**

This project is part of the overall plan to redevelop the *RS&CM*, Volume II on a chapter by chapter basis. This project will involve putting the policies into the new format, conducting a review of the Chapter 9 policies on average earnings as a whole and addressing various issues that have been raised, such as:

- Review of policy item #65.02, *Workers with Two Jobs*, to determine if clarification is required with respect to calculation of wage rates for persons with two jobs. In addition, a review of policy item #35.22, *Calculation of Earnings for Workers with Two Jobs*, is required to ensure that the two policies are consistent.
- Consideration of whether additional policy guidance is required with respect to calculation of long-term average earnings for workers with multiple employment where more than one of the average earnings exceptions appears to be applicable.

The key goals of this project are improved consistency in decision making and reduced appeals. These goals will be evaluated by examining Review Division and WCAT decisions and reviewing feedback from WCB staff and external stakeholders.

### **15. Skin Cancer – 2010/2011**

Skin cancer is the most commonly diagnosed form of cancer. Schedule B item #4(g) provides a presumption of work causation in favour of a worker who has developed a primary site skin cancer where there is prolonged contact with coal tar products, arsenic, cutting oils or prolonged exposure to solar ultraviolet light.

At issue is whether this description is current and supportable based on the most current medical science. Another issue is whether the specific types of skin cancer should be set out in Schedule B. A systematic review of the medical science is being undertaken as part of this project.

The key objectives of this review are to obtain the current medical and scientific literature related to skin cancer to determine whether the current policy is appropriate and to reduce the number of disputes and appeals that arise on the work relatedness of certain skin cancers. These objectives will be evaluated by examining Review Division and WCAT decisions, occupational disease statistics and reviewing feedback from WCB staff and external stakeholders.

## **16. Osteoarthritis of the First Carpo-Metacarpal Joint in Physiotherapists – Policy Item #26.02 of the RS&CM – 2010**

Policy item #26.02 addresses the recognition of an occupational disease under section 6(4.2) of the *Act* as a “disease that is peculiar to or characteristic of a particular process, trade or occupation”. To date, only one disease has been recognized in this manner – osteoarthritis of the first carpo-metacarpal joint in physiotherapists who perform deep friction massage.

Policy item #26.02 states that this recognition is limited to factual situations substantially the same as those applied to the worker in *Workers' Compensation Reporter* (“WCR”) Decision No. 231, dated February 9, 1977. WCR Decision No. 231 is one of two remaining WCR Decisions that have yet to be retired from policy status. The general reference in policy item #26.02 to WCR Decision No. 231 is problematic, as accessibility to old WCR Decisions is limited. The old WCR has not been published in over ten years, nor is it available electronically.

At issue is a review of the scientific and medical literature related to this condition to determine whether the current recognition is current and supportable. This project will also facilitate the retirement of the related WCR Decision. A medical and scientific literature review is currently underway.

## **17. Suspension of Benefits – 2010/2011**

Sections 57(2) and 57.1(2) of the *Act* give WorkSafeBC the authority to reduce or suspend compensation to a worker in certain situations of worker noncompliance. Current policy does not provide sufficient guidance to determine whether the resumption of full benefits (after a suspension is lifted) includes retroactive entitlement to the benefits that were reduced or suspended. Policy is also silent with respect to the type or extent to which compensation is to be reduced or suspended.

The outcome of this project will be evaluated based on Review Division and WCAT decisions and feedback from both WCB staff and external stakeholders.

## **18. Tendinosis – 2010/2011**

This project is being undertaken as part of a larger review of the ASTD policies.

Schedule B lists “Hand-wrist tendinitis, tenosynovitis (including deQuevain’s tenosynovitis)” and “Shoulder tendinitis” as occupational diseases. Policy item #27.12 of the *RS&CM* confirms that a claim made by a worker diagnosed with hand-wrist tendinitis/tenosynovitis or with shoulder tendinitis where no specific event or trauma, or series of events or traumas, has occurred, will be treated as a disease and adjudicated in accordance with policies in Chapter 4 of the *RS&CM*. The policy item provides the guiding principles when interpreting Schedule B. As well, the policy details risk factors typically associated with these conditions to assist in determining whether it is biologically plausible that the hand-wrist tendinitis/tenosynovitis has resulted from the work activities.

It appears that there is a growing acceptance of the condition “tendinosis” in the medical community. As a result, WorkSafeBC is receiving an increasing number of medical reports where the diagnosis is tendinosis. An 'itis' condition is characterized by inflammation and typically will heal within 6 weeks. However, tendinosis is considered a chronic deterioration of the tendon and does not necessarily have the same risk factors or treatment protocols as tendinitis.

At issue is whether WorkSafeBC should recognize tendinosis as an occupational disease and whether policy should be developed to provide guidance on the risk factors and treatment protocols for tendinosis. The PRD is presently awaiting the results of a major study by National Institute of Occupational Safety and Health (“NIOSH”) on this issue before proceeding with this project.

## **19. Multiple Sclerosis as a Compensable Consequence – 2010/2011**

Policy item #22.31, *Multiple Sclerosis*, of the *RS&CM* includes the following statements, “While the cause of multiple sclerosis is unknown, there has been much medical literature on factors which may precipitate the onset of the disease in an already predisposed person. One of these factors is traumatic injury.”

This policy project will involve a review of the current medical and scientific literature with respect to whether multiple sclerosis may be caused by a traumatic injury.

## **20. Aggravation of a Disease – Policy Item #26.55 of the *RS&CM* – 2010**

Policy item #26.55 provides guidance with respect to compensability for a disability resulting from an aggravation of a pre-existing disease by a work activity. A concern has been raised that the policy is unclear as to whether certain diseases should be excluded, such that any worsening of the condition would not be considered compensable or whether there is a requirement for the pre-existing disease to be recognized as an “occupational disease” by WorkSafeBC. If it need not be a recognized occupational disease, additional guidance may be required as to when the aggravation is compensable.

The outcome of this project will be evaluated based on Review Division and WCAT decisions and feedback from both WCB staff and external stakeholders.

## **21. Whole Body Vibration – Policy Item #26.50 of the *RS&CM* – 2011**

The Worker and Employer Services Division has requested policy direction regarding the possible relationship between occupational exposure to Whole Body Vibration (“WBV”) and back injuries/disorders. There are conflicting views in the medical literature as to whether there is a causal link between WBV and certain back disorders.

Policy item #26.50 provides that disability can occur due to natural aging processes. Where degeneration results from multi-factoral causes, it is difficult for WorkSafeBC to measure or determine whether the occupation had any significant effect in advancing the pace of the degeneration compared with other occupations.

For a disability to be compensable, evidence must establish that the work activity brought about a disability that would probably not otherwise have occurred, or that the work activity significantly advanced the development of a disability that probably would have occurred later.

This project will involve a review of the scientific and medical literature on back disorders in workers exposed to whole body vibration. The results of this review will form the basis for a comprehensive analysis and development of policy options for stakeholder consultation.