

2003/08/01-01

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA
RESOLUTION OF THE BOARD OF DIRECTORS

**Re: Accident Fund and Assessments
Decisions 990824-01, 990824-02, 990824-03
and 990824-04, 15 W.C.R. 565 to 582**

WHEREAS:

Pursuant to Section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto (the "*Act*") the Board of Directors ("BOD") must set and revise as necessary the policies of the BOD, including policies respecting compensation, assessment, rehabilitation and occupational health and safety and set and supervise the direction of the Workers' Compensation Board ("WCB");

AND WHEREAS:

Pursuant to sections 36, 37, 42 and 82 of the Act, the former Panel of Administrators ("Panel") passed resolutions 990824-01, 990824-02, 990824-03 and 990824-04, reported as published policy decisions at 15 W.C.R. 565 to 582 (the "Resolutions");

AND WHEREAS:

By Resolution 990824-02, the Panel resolved that, concurrent with the implementation of a revised experience rating plan that considered three years of claims costs in calculating an experience rating, the WCB would develop and implement:

- (a) proposals to address claims avoidance activities, and
- (b) rate modification programs that considered factors other than claims cost, including claim frequency, severity, rehabilitation and return to work programs;

AND WHEREAS:

In 2000, the WCB created a Special Investigation Branch (the "SIB") whose responsibilities include investigation of claims avoidance activities, including mis and non-reporting of injuries and extent of disability, and the effect of those activities on employers' experience rating and assessment rates;

AND WHEREAS:

The SIB has reported to the BOD that investigation has revealed apparent significant claims avoidance activities, including mis and non-reporting, taking place among some employers covered by the Act;

AND WHEREAS:

The BOD has identified employer non-compliance with the Act, and specifically employer non-compliance with claims reporting obligations under the Act, as priority concerns that must be addressed;

AND WHEREAS:

The Appeal Division of the WCB recently considered the application of the Resolutions to a specific employer and concluded that certain payments based on the employer's injury reporting and claim experience during the time period material to the Resolutions were payable to the employer, notwithstanding that the SIB had reported that, based on its investigation, it appeared the employer was engaged in claims avoidance activities, including mis and non-reporting during that time period;

AND WHEREAS:

The BOD is of the opinion that the validity of the Resolutions and their application to employers is contingent upon the accuracy and credibility of employer injury reporting to the WCB in compliance with the Act;

AND WHEREAS:

As a result of the Appeal Division decision and in order to ensure:

- (a) the integrity of the Resolutions and the classification, assessment and injury reporting provisions of the Act, and

- (b) accuracy and fairness in regard to the assessment obligations of all employers under the Act, particularly those employers in the same rate group who would unfairly pay the financial consequences of a mis-reporting or non-reporting employer,

the BOD is of the view that policy and direction is necessary in regard to the application and implementation of the Resolutions and section 96(7) of the Act.

THE BOARD OF DIRECTORS RESOLVES THAT:

1. The following direction applies to the application and implementation of the Resolutions and Division 4 of the Act:
 - a) The application of the Resolutions and assessment decisions under Division 4 of the Act in regard to an employer is subject to investigation by the WCB to determine whether the employer has engaged in claims avoidance activities, including mis-reporting and non-reporting of injuries or extent of disability.
 - b) If the WCB is satisfied that there is evidence that the employer is engaged in claims avoidance activities, including mis-reporting or non-reporting of injuries or extent of disability, the application of the Resolutions, and the payment of any monies to the employer pursuant to them, may be suspended at the discretion of the WCB and the WCB will conduct or continue an inquiry as authorized by section 88 of the Act (the "inquiry").
 - c) The WCB will, at the conclusion of the inquiry, implement the Resolutions in a manner that gives full force and effect to the decisions reached by the WCB arising out of the inquiry and may, pursuant to section 96(7) of the Act, set aside previous decisions.
 - d) The obligations of an employer to pay assessments which become payable under the Act during a period of suspension of the Resolutions as contemplated above, continue and nothing in this Resolution affects those obligations to pay.
 - e) If, at the conclusion of the inquiry, the WCB determines that an employer has engaged in claims avoidance activities including, mis-reporting or non-reporting of injuries or extent of disability to the WCB,

- f) the WCB will make the adjustments and disposition of the funds, reserves and accounts pertaining to that employer as it considers just, expedient and advisable, including but not limited to, surplus funds and rates of assessment or special rates of assessment, and in this regard may set aside previous decisions pursuant to section 96(7) of the Act.
 - g) The employer will be given full disclosure of evidence of apparent or perceived claims avoidance activities, including mis-reporting or non-reporting, and will be given an opportunity to respond and explain its activities in this respect.
2. This Resolution constitutes a policy decision of the Board of Directors and applies to all monies paid and payable under the Resolutions and Division 4 of the Act.

DATED at Richmond, British Columbia, August 6, 2003.

By the Workers' Compensation Board

**DOUGLAS J. ENNS, CHAIR
BOARD OF DIRECTORS**