

2004/01/20-01

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

RESOLUTION OF THE BOARD OF DIRECTORS

RE: The Status of Treatment Injuries

WHEREAS:

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

AND WHEREAS:

Section 5(1) of the *Act* provides that the Workers' Compensation Board ("WCB") must pay compensation out of the accident fund where personal injury or death arising out of and in the course of employment is caused to a worker;

AND WHEREAS:

Policy in the *Rehabilitation Services & Claims Manual* ("*RS&CM*"), Volume II provides that where a further injury arises as a direct consequence of treatment for a compensable injury, the further injury is also compensable;

AND WHEREAS:

Policy does not clearly indicate the basis upon which a further injury is compensable;

AND WHEREAS:

The Policy and Regulation Development Bureau ("Bureau") has consulted with stakeholders on this issue;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. Amendments to policy items #22.00, #22.10, #22.11, #22.15 and #22.21 of the *RS&CM*, Volume II, attached as Appendix A, are approved and apply to all decisions, including appellate decisions, made on or after February 1, 2004, regardless of the date of the original work injury or the further injury.
2. Policy item #74.11 is deleted and amendments to policy item #111.10 of the *RS&CM*, Volume II, attached as Appendix B, are approved effective February 1, 2004.
3. Decision No. 152 of the *Workers' Compensation Reporter*, Volume 2 is retired effective February 1, 2004.
4. This resolution is effective February 1, 2004.

DATED at Richmond, British Columbia, January 20, 2004.

By the Workers' Compensation Board

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

APPENDIX A

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

(Additions in Bold, Deletions in Strikethrough)

#22.00 COMPENSABLE CONSEQUENCES OF WORK INJURIES

Once it is established that an injury arose out of and in the course of employment, the question arises as to what consequences of that injury are compensable. The minimum requirement before one event can be considered as the consequence of another is that it would not have happened but for the other.

Not all consequences of work injuries are compensable. A claim will not be reopened merely because a later injury would not have occurred but for the original injury. Looking at the matter broadly and from a "common sense" point of view, it should be considered whether the ~~previous work~~ injury was a significant cause of the later injury. **If the work injury was a significant cause of the further injury, then the further injury is sufficiently connected to the work injury so that it forms an inseparable part of the work injury. The further injury is therefore considered to arise out of and in the course of employment and is compensable.**

EFFECTIVE DATE: February 1, 2004

APPLICATION: All decisions, including appellate decisions, made on or after February 1, 2004 regardless of the date of the original work injury or the further injury.

#22.10 Further Injury or Increased Disablement Resulting from Treatment

Where a further injury **or increased disablement** arises as a direct consequence of treatment for a compensable injury, ~~the further injury is also compensable~~ **it is sufficiently connected to the original work injury as to form part of that injury. The further injury is therefore considered to arise out of and in the course of employment and is compensable.**

Where a worker is undergoing treatment for a compensable injury, the place of treatment is analogous to a place of employment, ~~and a~~ **A** further injury arising out of the place of treatment ~~would also be~~ **is compensable provided it is consistent with the worker being at the place of treatment for the purpose of treatment and does not result from activities of a personal nature. The further injury in these cases is compensable because it is sufficiently connected to the original work injury so that it forms part of that injury and is therefore considered to arise out of and in the course of employment.** For example, if a worker is undergoing treatment at a hospital for a compensable injury and sustains a further injury by stumbling down the stairs in the hospital **while en route to a treatment appointment, the further injury** ~~that is also~~ compensable.

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EFFECTIVE DATE: February 1, 2004
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#22.11 *Disablement Caused by **Unauthorized** Surgery*

Compensation is not limited to the direct consequences of work accidents. Ordinarily, when a worker undertakes surgery for ~~the injuries sustained~~ **a work injury**, the consequences of the surgery are ~~accepted as consequences of the accident, and any~~ **considered to be sufficiently connected to the original work injury as to form part of that injury**. Any disablement resulting from the surgery is treated as compensable **on the basis that it arose out of and in the course of employment**.

~~No doubt an~~ **An** exception could be made if a worker recklessly undertook surgery, knowing that it was likely to do more harm than good. In that case, a worker might be viewed as having introduced a new cause of disablement **so that the further injury is not sufficiently connected to the original work injury so as to form part of that injury**. There may be other grounds for making an exception, ~~but there is no rational ground on which an exception can be made~~. **However, the connection between the original work injury and the further injury is not severed** simply because the surgery was not authorized by the Board.

~~In a Board decision, the worker had suffered a compensable injury at work, but had then become disabled following surgery carried out without the Board's authorization. The question was whether the disablement should be compensated as resulting from the injury or disallowed because it resulted from unauthorized surgery. Once it was determined that the worker's conduct in undertaking the unauthorized surgery was not unreasonable, the surgery was treated as having resulted from the work injury, and pursuant to the general rule, the consequences of the surgery were accepted as the consequences of the work accident.~~

Virtually all patients place complete faith in their physicians and, if a physician merely suggests the remote possibility of improvement in a patient's condition through surgery, it cannot be said to be "clearly unreasonable" for the patient to go along with that suggestion. It is irrelevant whether unauthorized surgery was successful or unsuccessful, whether or not the worker and/or the physician knew the Board was not prepared to authorize the surgery, nor that the surgery was purely exploratory in nature.

The only situation where it is foreseeable that the Board could reasonably refuse payment of benefits for unauthorized surgery is where a worker, in desperation

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and against the ~~advice~~ **advice** of every other physician consulted, deliberately seeks out surgery. **In such a situation, the connection between the original work injury and the further injury is considered to be severed. However, Unless** the worker can be shown to have acted foolishly, the worker should not be deprived of compensation because there happens to be a persuasive surgeon involved who has convinced the worker that, on balance, surgery is the best course of action.(9)

The above rules only apply where the surgery resulted from the injury. The Board accepts no responsibility for the cost of surgery or any resulting disability where the surgery was not a consequence of the injury.

EFFECTIVE DATE: February 1, 2004
APPLICATION: All decisions, including appellate decisions, made on or after February 1, 2004 regardless of the date of the original work injury or the further injury.

#22.15 *Travelling To and From Treatment*

The test for determining whether a further injury is compensable is whether the work injury was a significant cause of the further injury. Where this test is met, there is a sufficient connection between the work injury and the further injury to consider the further injury a part of the work injury. In considering whether this test has been met, the place of treatment is analogous to a place of employment.

Travel to the place of treatment is generally comparable to the ordinary commute to work. Injuries arising in the course of normal travel for subsequent treatment are generally not compensable. For example, if a worker suffering from a compensable injury is subsequently injured in the course of travel in the following circumstances, it is not compensable:

- (a) attending the office of the attending physician for advice, examination or treatment;
- (b) attending for x-ray examinations or laboratory tests when associated with a visit to the office of the attending physician and not involving a special journey from home;
- (c) attending the office of a medical specialist in connection with a course of treatments by such a specialist;
- (d) attendances at the out-patient department of a hospital, ~~the Board's Rehabilitation Centre~~ or a private physiotherapist for a course of therapy treatments;

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- (e) travel to a drugstore for the purchase of drugs or other medical supplies;
- (f) travel to an optician or optometrist, prosthetist, shoemaker or hearing aid dealer in connection with medical supplies or the fulfillment of prescriptions.

The heading also includes any other types of visits or attendances which are part of a routine (analogous to travelling to and from work) or which are analogous to personal shopping.

Apart from routine travel in connection with subsequent treatment, a worker may sometimes be injured in the course of a special and exceptional journey undertaken as a result of the compensable injury. The following headings illustrate the point.

1. Emergency Transportation

Where a compensable injury has just occurred and a worker is being transported to a hospital or other place of emergency treatment, and a further injury occurs in the course of such transportation, the further injury is also compensable. This is so whether the worker is travelling on foot, by ambulance, by automobile, by aircraft, or by any kind of vehicle; and it is so regardless of the ownership of the vehicle, and regardless of whether the worker is driving the vehicle or being carried as a passenger.

2. Treatment-Related Vehicles

If a worker is travelling to or from a place of treatment for a compensable injury and sustains a further injury while travelling in a vehicle that is provided for that purpose by an institution engaged in the provision of treatment, or in the provision of a vehicle for the conveyance of patients for treatment, the injury is compensable.

3. Exceptional Travel for Subsequent Treatment

This heading relates to situations where a worker is travelling by prearranged appointment to a place of exceptional medical treatment, or for an exceptional examination. In these cases, an injury arising out of travel to or from that place of treatment is compensable. The following situations illustrate this point.

- (a) Travelling to a hospital for admittance as an inpatient, or travelling home following discharge from hospital as an inpatient.
- (b) ~~Travelling to Richmond from the Interior for a course of treatment at the Board's Rehabilitation Centre, with accommodation at the Board's Rehabilitation Residence.~~

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- (eb) Travelling to any other place of special treatment that involves living away from home for the duration of the treatment.
- (ec) Travelling in relation to a referral by the attending physician to a specialist for a special examination or treatment.
- (ed) Travelling for x-ray examination or laboratory tests where this involves a special journey separate from any attendance for routine treatment.
- (ef) Travelling to a special place of paramedical attention, or a social or rehabilitation agency in connection with assistance in the diagnosis, handling, treatment or care of medical or rehabilitation problems related to the compensable injury on referral by the attending physician, or by the Board.
- (ef) Travelling on referral by a physician or qualified practitioner to another physician or qualified practitioner for a second opinion.
- (eg) Travelling for a medical examination at the Board by prearranged appointment with the Board, or for a medical examination elsewhere approved by the Board in connection with a compensable injury.

In the examples in items 1-3 above, the further injury is compensable because it is sufficiently connected to the original work injury as to form part of that injury. The further injury is therefore considered to arise out of and in the course of employment.

EFFECTIVE DATE: February 1, 2004
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#22.21 *Activities on Board Premises or at Other Premises under Board Sponsorship*

Where a worker is attending at the Board by prearranged appointment made with an officer of the Board for the purpose of an enquiry, interview or discussion in respect of a claim which has been accepted, or which is subsequently accepted, and where the worker suffers a further injury arising out of and in the course of travel to or from such an appointment, the further injury will be compensable.

The same rules apply where a worker is attending by prearranged appointment to meet with the Board's Review Division, the Workers' Compensation Appeal Tribunal or a Medical Review Panel.

Where an injured worker is reinjured while undergoing a course of rehabilitation training sponsored by the Board, the second injury may be regarded as a compensable consequence of the first injury. (11)

In all of these instances the place of treatment, appointment or rehabilitation is analogous to a place of employment. The further injury is compensable because it is sufficiently connected to the original injury as to form part of that injury and, therefore, is considered to arise out of and in the course of employment.

EFFECTIVE DATE: ~~March 3, 2003 (as to references to the Review Division and the Workers' Compensation Appeal Tribunal and deletion of references to the Board's Rehabilitation Residence)~~ **February 1, 2004**

APPLICATION: ~~Not applicable.~~ **All decisions, including appellate decisions, made on or after February 1, 2004 regardless of the date of the original work injury or the further injury.**

APPENDIX B

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

(Additions in Bold, Deletions in Strikethrough)

~~#74.11~~ ~~Medical Negligence or Malpractice~~

~~During the progress of a worker's file, information may come to the attention of Board employees that would lead them to conclude that there was prima facie evidence of medical malpractice or negligence. This may come from the perusal of a single file or the perusal of a series of files where workers have been treated by the same physician. The following action should be taken in these cases:~~

- ~~1. Where this is brought to the attention of a Board employee or a Board physician, it shall be reported to the Executive Director, Health Care Services.~~
- ~~2. The Executive Director, Health Care Services will review the case, together with a committee composed of the following members:
 - ~~(a) The Board's General Counsel, or nominee;~~
 - ~~(b) The Director, Clinical Services Department;~~
 - ~~(c) The Director, Rehabilitation Services.~~~~
- ~~3. The committee will forward to the President a recommendation for action in cases where it is felt that medical malpractice or negligence may have occurred. The President will determine whether to proceed with an action. The worker will be advised of the President's decision with reasons.~~

#111.10 Injury Caused by Worker or Employer

Section 10(1) of the *Act* provides that "The provisions of this Part are in lieu of any right and rights of action, statutory or otherwise, founded on a breach of duty of care or any other cause of action, whether that duty or cause of action is imposed by or arises by reason of law or contract, express or implied, to which a worker, dependant or member of the family of the worker is or may be entitled against the employer of the worker, or against any employer within the scope of this Part, or against any worker, in respect of any personal injury, disablement or death arising out of and in the course of employment and no action in respect of it lies. This provision applies only when the action or conduct of the employer, the employer's servant or agent, or the worker, which caused the breach of duty arose out of and in the course of employment within the scope of this Part."

This provision prohibits a law suit by an injured worker or a dependant of an injured worker against the employer of the worker or against any employer within

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the scope of Part 1 of the *Act*, or against any worker in respect of any personal injury, disablement, or death arising out of and in the course of the employment. The worker or dependant has no choice but to claim compensation. In situations where the third party on a claim is reported to be a worker, it must also be established that the activities of this “worker” were arising out of and in the course of his or her employment.

~~Where an action is barred under section 10(1) in respect of a work injury, the same applies to any subsequent injury occurring in the course of treatment or rehabilitation which is accepted as a compensable consequence of that injury.~~