

**2004/05/18-02**

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

**RE: Statutory Presumption and Diseases with Long Latency Periods**

**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 6(3) of the *Act* provides that where a worker employed in a process or industry listed in the second column of Schedule B of the *Act* contracts the disease listed in the first column, the disease is deemed to be due to the nature of the worker's employment, unless the contrary is proved;

**AND WHEREAS:**

For the presumption in section 6(3) to apply, the worker must be employed in the industry or process specified in Schedule B "at or immediately before the date of disablement" from the disease;

**AND WHEREAS:**

Policy item #26.21 of the *Rehabilitation Services & Claims Manual* ("*RS&CM*"), Volumes I and II, extends the meaning of "immediately before" in section 6(3) of the *Act* to include situations where medical evidence has established that there is a long latency period between exposure to the process, agent or condition of employment and the time the disease first becomes manifest;

**AND WHEREAS:**

Appellate decisions have raised concerns about the broad interpretation of the phrase "immediately before" in policy item #26.21.

**THE BOARD OF DIRECTORS RESOLVES THAT:**

1. Amendments to policy item #26.21 of the *RS&CM*, Volumes I and II, attached as an Appendix, are approved and apply to all decisions, including appellate decisions, made on or after June 1, 2004.
2. This resolution is effective June 1, 2004 and applies to all decisions, including appellate decisions, made on or after that date.

DATED at Richmond, British Columbia, May 18, 2004.

**By the Workers' Compensation Board**

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

**APPENDIX**  
***Rehabilitation Services & Claims Manual, Volume I***

**#26.21**      *Schedule B Presumption*

Section 6(3) provides:

“If the worker at or immediately before the date of the disablement was employed in a process or industry mentioned in the second column of Schedule B, and the disease contracted is the disease in the first column of the schedule set opposite to the description of the process, the disease is deemed to have been due to the nature of that employment unless the contrary is proved.”

The primary significance of Schedule B is with its use as a means of establishing work causation.

The fundamental purpose of Schedule B is to avoid the repeated effort of producing and analyzing medical and other evidence of work-relatedness for a disease where research has caused the Board to conclude that such disease is specific to a particular process, agent or condition of employment (see #26.01). Once included in Schedule B, it is presumed in individual cases that fit the disease and process/industry description that the cause was work-related. A claim covered by Schedule B can be accepted even though no specific evidence of work relationship is produced. A review of the available medical and scientific evidence would establish a likely relationship between the disease and the employment. The listing in the Schedule avoids the effort of producing the evidence in every case. Where the research does not clearly relate the disease to particular employments, the disease is not listed in Schedule B and the issue of work-relatedness must be determined on a case-by-case basis (see #26.22). If at the time a worker becomes disabled by a disease listed in Schedule B, or if immediately before such date, such worker was employed in the process or industry described in the second column of the Schedule opposite to such disease, the worker is entitled to a presumption that the disease was caused by their employment, “unless the contrary is proved”. This presumption applies whether the disease manifests itself while the worker is at work, at home, while away on holidays, or elsewhere. The words “immediately before” used in Section 6(3) are intended to deal with those situations where someone has been employed in the process or industry described in the Schedule, and has left that employment a very short time prior to the onset of the disease. ~~An exception to this is where the medical and scientific evidence has established that there is a long latency period between exposure to the process, agent or condition of employment and the time the disease first becomes manifest. Individual judgment must be exercised in the circumstances of each claim to determine the meaning of “immediately before” having regard to the medical and other evidence available. For example, the manifestation of an infection caused by staphylococcus aureus or of a respiratory irritation resulting from the inhalation of an irritant gas can be expected to occur within a short period of time following the relevant exposure. In the circumstances of such a claim, the presumption~~

**APPENDIX**  
***Rehabilitation Services & Claims Manual, Volume I***

~~would normally be considered only where the condition became manifest within a short period of time following the exposure. However, in a claim filed by a worker who suffers from a recent onset of a cancer listed in Schedule B but who has not worked in the process or industry described opposite such cancer for a number of years, it may be appropriate to conclude that such worker was employed in such process or industry “immediately before the date of disablement” by virtue of the long latency period which is known to exist with respect to such a cancer.~~

If a worker becomes disabled by a disease listed in Schedule B but at the relevant time had not been employed in the process or industry described in the Schedule, the claim may still be an acceptable one, however no presumption in favour of work-relatedness would apply. In this event establishing work causation follows the approach covered in #26.22.

Inclusion of the words “unless the contrary is proved” in Section 6(3) means that the presumption is rebuttable. Even though the decision-maker need not consider whether working in the described process or industry is likely to have played a causative role in giving rise to the disease, they must still consider whether there is evidence which rebuts or refutes the presumption of work-relatedness.

The standard of proof to be applied in determining whether the presumption has been rebutted is proof on a balance of probabilities. This is the same basic standard of proof applicable in the workers’ compensation system. If the evidence is more heavily weighted in favour of a conclusion that it was something other than the employment that caused the disease, then the contrary will be considered to have been proved and the presumption is rebutted. The gathering and weighing of evidence generally is covered in #97.00 through #97.60.

Difficulties may arise in determining whether the worker was employed in the process or industry described in the second column. This often arises because of the use of such words as “excessive” or “prolonged”. While the Board would like to define more precisely the amount and duration of exposure required instead of using these words, it is usually not possible. The exact amounts will often vary according to the particular circumstances of the work place and the worker, or may not be quantified with sufficient precision by the available research. However, while such words are of uncertain meaning, there is valid reason for inserting them. Individual judgment must be exercised in each case to determine their meaning, having regard to the medical and other evidence available as to what is a reasonable amount or duration of exposure.

**APPENDIX**  
***Rehabilitation Services & Claims Manual, Volume I***

**EFFECTIVE DATE:**        **June 1, 2004**

**APPLICATION:**        **All decisions, including appellate decisions, made  
on or after June 1, 2004.**

**APPENDIX**  
***Rehabilitation Services & Claims Manual, Volume I***

**#26.21      Schedule B Presumption**

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The fundamental purpose of Schedule B is to avoid the repeated effort of producing and analyzing medical and other evidence of work-relatedness for a disease where research has caused the Board to conclude that such disease is specific to a particular process, agent or condition of employment (see policy item #26.01). Once included in Schedule B, it is presumed in individual cases that fit the disease and process/industry description that the cause was work-related. A claim covered by Schedule B can be accepted even though no specific evidence of work relationship is produced. A review of the available medical and scientific evidence would establish a likely relationship between the disease and the employment. The listing in the Schedule avoids the effort of producing the evidence in every case. Where the research does not clearly relate the disease to particular employments, the disease is not listed in Schedule B and the issue of work-relatedness must be determined on a case-by-case basis (see policy item #26.22).

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**APPENDIX**  
***Rehabilitation Services & Claims Manual, Volume I***

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If a worker becomes disabled by a disease listed in Schedule B but at the relevant time had not been employed in the process or industry described in the Schedule, the claim may still be an acceptable one, however no presumption in favour of work-relatedness would apply. In this event establishing work causation follows the approach covered in policy item #26.22.

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**APPENDIX**  
***Rehabilitation Services & Claims Manual, Volume I***

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