

**2010/07/20-05**

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

**RE: Cost Relief for Subsequent Non-Compensable Incidents**

**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:**

Pursuant to section 39 of the *Act*, the Board of Directors must assess and levy on and collect from employers, assessment rates in a manner and form and by the procedure the Board of Directors considers adequate and expedient;

**AND WHEREAS:**

Pursuant to section 42 of the *Act*, the Workers' Compensation Board ("WorkSafeBC") varies assessment rates based on relative levels of hazard or cost of compensation, and for this purpose has adopted a system of experience rating;

**AND WHEREAS:**

Chapter 17 of the *Rehabilitation Services & Claims Manual* ("*RS&CM*"), Volume II sets out the policies that provide guidance on when WorkSafeBC will grant relief of costs;

**AND WHEREAS:**

Current policy does not address whether an employer should receive cost relief where a worker continues to receive temporary wage-loss benefits for a compensable disability when a subsequent non-compensable incident delays the worker's recovery from the compensable disability;

**AND WHEREAS:**

There are consequential amendments and housekeeping changes that are required;

**AND WHEREAS:**

The Policy and Research Division has undertaken stakeholder consultation on this issue;

**THE BOARD OF DIRECTORS RESOLVES THAT:**

1. The changes to policy item # 34.55, *Subsequent Non-Compensable Incidents*, of the *RS&CM*, Volume II, as per the attached Appendix "A", are approved, and apply to all decisions made on or after August 1, 2010.
2. The addition of policy item #115.33, *Claims Relating to Subsequent Non-Compensable Incidents*, to Chapter 17 of the *RS&CM*, Volume II, as per the attached Appendix "B", is approved, and applies to all decisions made on or after August 1, 2010.
3. The consequential amendments to policy item #115.30, *Experience Rating Cost Exclusions*, of the *RS&CM*, Volume II, as per the attached Appendix "C", is approved, and apply to all decisions made on or after August 1, 2010.
4. This resolution is effective August 1, 2010.
5. This resolution constitutes a policy decision of the Board of Directors.

DATED at Richmond, British Columbia, July 20, 2010

**By the Workers' Compensation Board**

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**GEORGE MORFITT, FCA  
CHAIR, BOARD OF DIRECTORS**

## APPENDIX A

### REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II POLICY

Additions in Bold, Deletions Struckthrough

#### *#34.55 Subsequent Non-Compensable Incidents*

If a subsequent non-compensable incident occurs at a time when a worker is still recovering from his or her compensable injury, the following principles apply.

A subsequent non-compensable incident may include:

- sustaining a non-compensable injury, condition, disease, or disability; or
- undergoing surgery, tests or other treatment for a non-compensable injury, condition, disease, or disability.

In the event that a worker temporarily suspends treatment for a compensable injury because of personal reasons, such as a family emergency or a vacation, this would not be considered a subsequent non-compensable incident.

The Board is only authorized to pay for disability that is caused by an employment-related injury and only to the extent of that disability. For this reason, the Board will not pay for periods of disability caused by a subsequent non-compensable incident. ~~or for periods of disability that are extended because the subsequent non-compensable incident delays recovery.~~

If a worker is still disabled by a compensable injury when a subsequent non-compensable incident occurs, the Board estimates when the **worker would have reached maximum medical recovery** ~~disability resulting from the compensable injury would have ended.~~ The Board then continues to pay wage-loss benefits for the period that the Board estimates the worker would have taken to **reach maximum medical recovery** ~~fully recover~~ from the compensable injury had the subsequent non-compensable incident not occurred.

When the estimated date for terminating wage-loss benefits arrives, if the worker is still disabled, the Board makes a new decision as to whether the disability, or increased disability, is due to the compensable injury or the subsequent non-compensable incident that has aggravated the compensable injury. If the disability is due ~~only~~ to the subsequent non-compensable incident, wage-loss benefits are terminated. However, if the disability is due to the compensable injury, wage-loss benefits may be continued.

## APPENDIX A

### **REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II POLICY**

Additions in Bold, Deletions Struckthrough

In the marginal cases, it is impossible to do better than weigh the medical evidence related to the compensable injury against the medical evidence related to the subsequent non-compensable incident to reach a conclusion on the termination of wage-loss benefits. The standard of proof is the balance of probabilities and consideration is given to section 99(3) of the *Act*.

The above applies even if the treatment for the subsequent non-compensable incident is carried out at the same time as treatment for the compensable injury and might not have been carried out at the time if the worker had not then sought treatment for the condition resulting from the compensable injury.

~~If a compensable injury delays a worker's recovery from a subsequent non-compensable incident, wage-loss benefits may be paid for the period of the delay.~~

**EFFECTIVE DATE:**            ~~July 1, 2010~~**August 1, 2010**

**APPLICATION:**            ~~This item applies to all claims for injuries occurring on or after July 1, 2010.~~**This policy applies to all decisions made on or after August 1, 2010.**

## APPENDIX B

### REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II POLICY

Additions in Bold, Deletions Struckthrough

#### **#115.33** *Claims Relating to Subsequent Non-Compensable Incidents*

A worker may continue to receive temporary wage-loss benefits where recovery from a compensable disability is delayed due to a subsequent non-compensable incident.

As set out in policy item #34.55, the Board estimates when the worker would have reached maximum medical recovery. The Board continues to pay wage-loss benefits for the period that the Board estimates the worker would have taken to reach maximum medical recovery from the compensable injury had the subsequent non-compensable incident not occurred.

When the estimated date for terminating wage-loss benefits arrives, if the worker is still disabled, the Board makes a new decision as to whether the disability is due to the compensable injury or the subsequent non-compensable incident. If the disability is due to the compensable injury, wage-loss benefits may be continued.

Where the delay in recovery is due to the subsequent non-compensable incident, the cost of compensation associated with the delay in recovery beyond the estimated date for terminating temporary wage-loss benefits is excluded from the employer's experience rating. These costs will also not be charged to the employer's rates group, but will be spread across all rate groups.

Claims costs associated with a permanent disability award would not be relieved under this policy.

**EFFECTIVE DATE:** August 1, 2010

**APPLICATION:** This policy applies to all decisions made on or after August 1, 2010.

## APPENDIX C

### REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II CONSEQUENTIAL AMENDMENT

Additions in Bold, Deletions Struckthrough

#### **#115.30 Experience Rating Cost Exclusions**

Section 42 provides as follows.

The Board shall establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class as may be considered just; and where the Board thinks a particular industry or plant is shown to be so circumstanced or conducted that the hazard or cost of compensation differs from the average of the class or subclass to which the industry or plant is assigned, the Board must confer or impose on that industry or plant a special rate, differential or assessment to correspond with the relative hazard or cost of compensation of that industry or plant, and for that purpose may also adopt a system of experience rating.

The Board has adopted an experience rating plan (ER) under this section. The plan compares the ratio between an employer's claim costs and assessable payroll with the ratio between the total claim costs and assessable payroll of the employer's rate group. Subject to maximums, discounts are assigned for favourable ratios and surcharges for unfavourable ratios. The discount or surcharge takes the form of a percentage increase or decrease in the usual assessment rate. Details of ER can be found in the policy in Item AP1-42-1 of the *Assessment Manual*.

As a general rule, all acceptable claims coded to a particular employer are counted for experience rating purposes. It makes no difference whether the injury was or was not the employer's fault. There are, however, some types of claim costs which are excluded from consideration. These are:

1. Costs recovered by way of a third party action (see policy item #111.25, *Pursuing of Subrogated Actions by the Board*).
2. Investigation and/or compensation costs paid out prior to the disallow of a claim or reversal of a decision by the Board, or the Workers' Compensation Appeal Tribunal (see policy item #113.10, *Investigation Costs*).
3. Costs transferred to the rate group of another employer under section 10(8) (see policy item #114.10, *Transfer of Costs from One Class to Another*).

## APPENDIX C

### REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II CONSEQUENTIAL AMENDMENT

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4. Costs assigned to the funds created by section 39(1)(d) and (e) (see policy item #114.30, *Disasters or Other Circumstances which Unfairly Burden a Rate Group*, and policy item #114.40, *Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability*).
5. Occupational disease claims which on average require exposure for, or involve latency periods of, two or more years before manifesting into a disability. The diseases presently excluded on this ground are:
  - Non-traumatic hearing loss, excluding hearing loss resulting from other injuries
  - Silicosis
  - Asbestosis
  - Other diagnosed pneumoconioses, for example, anthracosis and siderosis
  - Pneumoconioses not specifically diagnosed
  - Heart disease
  - Cancer
  - Hand-arm vibration syndrome, vinyl chloride induced Raynaud's phenomenon, disablement from vibrations
  - (see policy item #113.20, *Occupational Diseases*)
6. Until September 27, 2002, costs after 13 weeks where section 5(3) applies (see Item C3-14.10, *Serious and Wilful Misconduct*). Effective September 28, 2002, costs after 10 weeks where section 5(3) applies (see Item C3-14.10, *Serious and Wilful Misconduct*).
7. Costs from accidents substantially due to personal illness, e.g. epilepsy (see Item C3-16.00, *Pre-Existing Conditions or Diseases*).
8. Injuries covered by Items C11-88.10, *Work Assessments*, C11-88.40, *Training-on-the-Job*, and C11-88.50, *Formal Training*.

## APPENDIX C

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9. The situations covered by policy item #115.31, *Injuries or Aggravations Occurring in the Course of Treatment or Rehabilitation*, and policy item #115.32, *Claims Involving a Permanent Disability Award and a Fatality*, below.
- 10. The situation covered by policy item #115.33.**

The decision whether a claim falls within one of the exclusions will usually be made by the Board. In the case of third party actions (Exclusion 1), a Board solicitor makes the decision.

**EFFECTIVE DATE: August 1, 2010**

~~June 1, 2009 – Delete references to the Review Division, Medical Review Panel and the Worker and Employer Services Division.~~

**HISTORY: June 1, 2009 – Delete references to the Review Division, Medical Review Panel and the Worker and Employer Services Division.**

March 1, 2005 – Updates language as to the use of the phrase “rate group”, consistent with rate-making system in *Assessment Manual*; updates and incorporates cross-references to policy items #113.20 and C11-88.10, to make all items consistent and accurate. This policy continues the substantive requirements as they existed prior to the effective date. Applied to all decisions on or after March 1, 2005.

March 18, 2003 – “Discount”, “Surcharge” and the numerical reference to the policy in Item AP1-42-1 in the *Assessment Manual* were incorporated.

**APPLICATION: Applies on or after June 1, 2009. This policy applies to all decisions made on or after August 1, 2010.**