

APPENDIX C

#66.12 *Provisional Rate*

~~Wage-loss~~ Compensation may be based on a provisional rate if there is a delay in obtaining information ~~as to the worker's actual earnings~~ **required to make a decision about a worker's average net earnings**. The worker must be informed that ~~this a provisional rate has been~~ **set**.

The amount of the provisional rate depends on the information available to the Board Officer. While being careful not to set a rate which is higher than the worker's actual earnings, the Board Officer should, as far as is possible, take into consideration the actual circumstances of the worker, for instance, age, occupation, seniority and union status. The Board Officer should also have regard to statements of earnings already on file or on other recent compensation claims.

Where a Board Officer ~~has made a decision to~~ sets a provisional rate, this is an ~~interim rate~~ **preliminary determination pending receipt of further information required to determine a worker's average net earnings**. If, ~~after payments have been made on a provisional basis,~~ sufficient earnings information is received **after payments have been made based on a provisional rate**, the rate may be changed to reflect the additional earnings information received **a decision on the worker's average net earnings will then be made**.

Section 96(5) of the Act provides that the Board may not reconsider a decision on the worker's average net earnings if more than 75 days have passed since the decision was made. The Board may also not reconsider a decision on the worker's average net earnings if a request for review has been made to the Review Division as provided for by section 96.2 of the Act.

A preliminary determination to set a provisional rate is not a "decision" for the purposes of section 96(5). Rather, it is a Board action that is intended to provide temporary financial relief to the worker until the Board receives the required information to make a decision on the worker's average net earnings. However, once the Board makes the average net earnings decision, that decision is subject to the provisions of section 96(5).

If insufficient earnings information or no information is received after a reasonable time, the Board Officer will review the rate at least every four weeks **from the date of the preliminary determination** until ~~a~~ **the decision on average net earnings** is made to fix the rate. The Board Officer may, on any of these occasions, reduce the rate to the statutory minimum or below if it is felt that ~~the evidence does not support the existing rate.~~ **(5) In setting a provisional rate, regard will be had to the applicable statutory minimum.** Where payments **based on a provisional rate** have been commenced ~~on an interim basis,~~ and the **average net earnings decision sets a final wage-loss rate is**

lower than the provisional rate previously set, no recovery of the payments will be made in the absence of an administrative error, fraud or misrepresentation by the worker, ~~or where the decision under review was one not within the statutory authority of the Board.~~ For a definition of an administrative error, refer to policy item #48.41.

EFFECTIVE DATE: **March 3, 2003**
APPLICATION: **To provisional rates set on or after the effective date.**

#65.04 *Provisional Rate*

~~Wage-loss~~ Compensation may be based on a provisional rate if there is a delay in obtaining information ~~as to the worker's actual earnings~~ **required to make a decision about a worker's average net earnings**. The worker must be informed that ~~this a provisional rate has been~~ **set**.

The amount of the provisional rate depends on the information available to the Board officer. While being careful not to set a rate which is higher than the worker's actual earnings, the Board officer should, as far as is possible, take into consideration the actual circumstances of the worker, for instance, age, occupation, seniority and union status. The Board officer should also have regard to statements of earnings already on file or on other recent compensation claims.

Where a Board officer ~~has made a decision to~~ sets a provisional rate, this is an ~~interim rate~~ **preliminary determination pending receipt of further information required to determine a worker's average net earnings**. If, ~~after payments have been made on a provisional basis,~~ sufficient earnings information is received **after payments have been made based on a provisional rate,** the rate may be changed to reflect the additional earnings information received **a decision on the worker's average net earnings will then be made**.

Section 96(5) of the Act provides that the Board may not reconsider a decision on the worker's average net earnings if more than 75 days have passed since the decision was made. The Board may also not reconsider a decision on the worker's average net earnings if a request for review has been made to the Review Division as provided for by section 96.2 of the Act.

A preliminary determination to set a provisional rate is not a "decision" for the purposes of section 96(5). Rather, it is a Board action that is intended to provide temporary financial relief to the worker until the Board receives the required information to make a decision on the worker's average net earnings. However, once the Board makes the average net earnings decision, that decision is subject to the provisions of section 96(5).

If insufficient earnings information or no information is received after a reasonable time, the Board officer will review the rate at least every four weeks **from the date of the preliminary determination** until ~~a~~ **the decision on average net earnings** is made ~~to fix the rate~~. In setting a provisional rate, regard will be had to the applicable statutory minimum. See policy item #93.26 regarding a worker's obligation to provide information. (2) Where payments **based on a provisional rate** have been commenced ~~on an interim basis,~~ and the **average net earnings decision sets a final wage-loss rate** ~~is lower than the~~

provisional rate previously set, no recovery of the payments will be made in the absence of an administrative error, fraud or misrepresentation by the worker, ~~or where the decision under review was one not within the statutory authority of the Board.~~ For a definition of an administrative error, refer to policy item #48.41.

EFFECTIVE DATE: **March 3, 2003**
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