

VOLUME II

CHAPTER 4

COMPENSATION FOR OCCUPATIONAL DISEASE

#25.00 INTRODUCTION

Section 6 of the *Act* provides that compensation is payable for occupational disease that is due to the nature of a worker's employment. Section 7 provides that compensation is payable for a certain level of non-traumatic noise-induced hearing loss that results from a worker's employment. **A worker's entitlement to compensation for a total or partial disability resulting from a loss of hearing is paid in accordance with the compensation provisions set out in Part 1 of the Act.** This chapter deals with such compensation.

Most compensation cases involve a personal injury (covered in Chapter 3) where it can readily be determined whether the event or series of events leading to such injury arose out of and in the course of employment. The cause of disease, by its nature, is often more difficult to determine. A common difficulty is distinguishing between an injury and a disease (the difference is discussed in policy item #13.10). Even when medical science has identified the cause of a disease in a general sense, it may be difficult to establish with any degree of certainty how and when a worker contracted or developed a disease. Further, workers' compensation does not extend to all diseases, rather only to those that are due to a worker's employment. In these circumstances, determining the extent to which a worker's employment had in producing the disease becomes a critical or central issue.

The question is: was the worker's disability caused by his or her work or by something else such as the operation of natural causes, or by congenital or hereditary disease. The *Act* provides different ways of dealing with this issue. These are discussed in this chapter.

#25.10 Legislative Requirements

Section 6(1) provides:

“Where

- (a) a worker suffers from an occupational disease and is thereby disabled from earning full wages at the work at which the worker was employed or the death of a worker is caused by an occupational disease; and
- (b) the disease is due to the nature of any employment in which the worker was employed, whether under one or more employments, compensation is payable . . . as if the disease were a personal injury arising out of and in the course of that employment. A health care benefit may be paid although the worker is not disabled from earning full wages at the work at which he or she was employed.”

For the diseases to which Section 6(1) of the *Act* apply, there are three basic requirements for compensability:

1. The worker must be suffering (or in the case of a deceased worker have suffered) from a disease designated or recognized by the Board as an “occupational disease”;
2. The disease suffered by the worker must be or have been “due to the nature of any employment” in which the worker was employed; and
3. The worker must be “disabled from earning full wages at the work” at which he or she was employed as a result of the disease. In the case of a deceased worker, his or her death must have been caused by such disease. This is discussed further in policy item #26.30. This third requirement does not apply to claims for silicosis, asbestosis, or pneumoconiosis (see policy item #29.40) or to claims for non-traumatic noise-induced hearing loss to which section 7 of the *Act* apply. Further, a worker need not be disabled by the disease in order to be entitled to health care benefits.

These elements of section 6 are discussed further in the following sections. The definition of “worker” is covered in Chapter 2.

A disease which is attributed to or is the consequence of a specific event or trauma, or to a series of specific events or traumas, will be treated as a personal injury and will be adjudicated in accordance with the policies set out in Chapter 3.

#26.00 THE DESIGNATION OR RECOGNITION OF AN OCCUPATIONAL DISEASE

Section 1 of the *Act* defines “occupational disease” as

“any disease mentioned in Schedule B, and any other disease which the Board, by regulation of general application or by order dealing with a specific case, may designate or recognize as an occupational disease, and “disease” includes disablement resulting from exposure to contamination (emphasis added).”

There are a great many diseases to which the general public are subject, many of which can be considered ordinary diseases of life. Available medical and scientific understanding about the causes of disease and about the role that employment may play covers a wide range from very good to very poor. Not every disease contracted by every worker is compensable. Deciding when they are is key to the operation of the *Act* and to adjudicating individual disease claims. It is within this context that decisions must be made as to the compensability of diseases, suffered by workers who are covered by the *Act*.

To assist in adjudicating the merits of occupational disease claims, to facilitate efficiency and consistency in the decision-making process and to establish an institutional memory (with the additional benefit of providing the working community with confirmation that the Board is aware that a disease may arise as a result of employment activities), the *Act* provides a means by which the Board may designate or recognize a disease as an “occupational disease”.

There are levels of designation or recognition based on the available medical and scientific evidence and on the Board’s experience in dealing with these diseases. The manner in which a disease is designated or recognized is primarily based on the strength of medical and scientific knowledge about the role employment may have in its causation. The following are the various ways in which an occupational disease may be designated or recognized.

#26.02 *Recognition under Section 6(4)(b)(4.2)*

Section ~~6(4)(b)~~ **6(4.2)** provides that:

“ . . . the Board may designate or recognize a disease as being a disease **that is** peculiar to or characteristic of a particular process, trade or occupation on the terms and conditions and with the limitations ~~the board deems adequate and proper~~ **set by the Board.**”

This provision gives the Board substantial flexibility in its designation or recognition of an occupational disease other than by listing it in Schedule B.

The Board may designate or recognize a disease as being a disease **that is** peculiar to or characteristic of a particular process, trade or occupation with respect to future claims in a broad sense, or it may impose a much more limited designation or recognition by specifying whatever terms or conditions or limitations it deems appropriate.

For example, the Board has recognized osteoarthritis of the first carpo-metacarpal joint of both thumbs ~~under this section~~ as being applicable to a physiotherapist who was involved in deep frictional massage which placed particular strain on those joints. (1) This recognition is limited to factual situations substantially the same as those that applied to the worker in that decision.

This section may be used to designate or recognize a disease where the expert medical and scientific information is insufficient to cause the Board to include it in Schedule B (with the benefit of the rebuttable presumption that the *Act* provides), but is sufficient to cause the Board to state for decision-makers (thus establishing an institutional memory) that there is a recognized possibility that the employment contributed to the causation of the disease where the worker was employed in a specific process, trade, or occupation. In these circumstances there is no presumption that this is the case.

#26.03 *Recognition by Regulation of General Application*

The Board may designate or recognize a disease as an occupational disease “by regulation of general application” (section 1). In these circumstances, the Board designates or recognizes a disease as an occupational disease but without specifying that it is peculiar to or characteristic of a particular process, trade or occupation. The desired institutional memory is thus less specific. The Board has designated or recognized the following as occupational diseases by regulation:

Bronchitis
Campylobacteriosis (Diarrhea caused by Campylobacter)
Carpal Tunnel Syndrome
Chicken Pox
Cubital Tunnel Syndrome
Disablement from Vibrations
Emphysema
Epicondylitis (Lateral and Medial)
Food Poisoning
Giardia Lamblia Infestation
Head Lice (Pediculosis Capitis)
Heart Disease
Herpes Simplex
Hypothenar Hammer Syndrome

Infectious Hepatitis
Legionellosis
Lyme Disease
Meningitis
Mononucleosis
Mumps
Plantar Fasciitis
Radial Tunnel Syndrome
Red Measles (Rubeola)
Ringworm
Rubella
Scabies
Serum Hepatitis
Shigellosis
Staphylococci Infections
Stenosing Tenovaginitis (Trigger Finger)
Streptococci Infections
Thoracic Outlet Syndrome
Toxoplasmosis
Typhoid
Vinyl Chloride Induced Raynaud's Phenomenon
Whooping Cough
Yersiniosis

It is important to distinguish between designation or recognition of an occupational disease under section ~~6(4)(b)~~ **6(4.2) where a particular process, trade or occupation is specified** or by regulation of general application, and the addition of a disease to Schedule B under section ~~6(4)(a)~~ **6(4.1)**. Where the Board concludes that a disease is more likely to occur in connection with a particular employment covered by the *Act* than elsewhere, it may be added to Schedule B (see policy item #26.01). On the other hand, where the Board concludes that a disease is sometimes due to the nature of a particular employment covered by the *Act*, but it does not appear that the disease is more likely to occur in connection with that employment than elsewhere (it is not something specific to that employment), the Board may designate or recognize the disease under section ~~6(4)(b)~~ **6(4.2) where a particular process, trade or occupation is specified**, or by regulation of general application, without the rebuttable presumption afforded by inclusion in Schedule B.

Several of the above contagious diseases are not likely to be “. . . due to the nature of any employment in which the worker was employed . . .” except for hospital employees, or workers at other places of medical care.

The authority under the *Act* to designate or recognize a disease **by regulation** under sections ~~6(4)(a), 6(4)(b)~~ or by regulation of general application **6(4.1) and 6(4.2)** rests with the Governors.

26.04 *Recognition by Order Dealing with a Specific Case*

The lack of prior designation or recognition by the Board of a disease as an occupational disease by any of the means specified in policy items #26.01, #26.02, or #26.03, does not mean a claim for such disease will not be considered on its merits. Such disease may not have been previously designated or recognized due to weak or a complete absence of medical and scientific information which causally associates such disease with employment. If the merits and justice of an individual claim for such a disease warrant its recognition as an occupational disease, the Board may do so “by order dealing with a specific case” (section 1).

The effect of such an order is to accept the claim for compensation purposes without establishing an institutional memory for decision-makers or an expectation for others who may suffer from that disease that the disease may be due to the nature of some employment. In other words, the disease will be recognized as an occupational disease limited to the specific facts of that individual claim.

This allows an avenue of recognition for unique, meritorious, individual disease claims. As the Board repeatedly encounters such claims for a particular disease, it may determine that a higher level of designation or recognition is warranted for that disease.

An ~~Adjudicator~~ **Board officer** upon investigating an individual claim may find that the condition suffered by the worker is not one listed in the first column of Schedule B, nor is it one which has been previously designated or recognized by the Board as an occupational disease under section 6(4)(b) or by regulation **6(4.2)**. If the ~~Adjudicator~~ **Board officer** concludes, after seeking appropriate input from both the worker (or their legal representative) and the employer (if a specific employer is identified) that the facts warrant recognition of the worker’s condition as an occupational disease, the ~~Adjudicator~~ **Board officer** will refer the claim with a recommendation to that effect to a panel made up of his or her Client Services Manager, (referred to in this section as the “Manager”), and a Board Medical Advisor (referred to in this section as the “Medical Advisor”).

If, however, after seeking such input from the worker and employer, the ~~Adjudicator~~ **Board officer** concludes that the facts do not warrant recognition of the worker’s condition as an occupational disease, the ~~Adjudicator~~ **Board officer** will disallow the claim without referring it to the panel, and will notify the worker and employer. This is an appealable decision. The ~~Adjudicator~~ **Board officer** shall provide the Manager with a memorandum advising that the worker’s condition is not one previously designated or recognized by the Board as an occupational disease, the nature of the condition, and the ~~Adjudicator~~ **Board officer’s** decision to disallow the claim.

The Manager, upon receipt of a recommendation from the ~~Adjudicator~~ **Board officer** for recognition of the worker's condition as an occupational disease, and after reviewing and discussing the claim with the Medical Advisor and after completing any further investigations which he or she considers appropriate, will determine whether the condition reported is one which should be recognized by the Board as an occupational disease for the purposes of that claim. If so, he or she will make an order to that effect which is recorded on the claim. The Manager will keep a record of all such referrals under this section.

If, after reviewing a referral under this section, the Manager concludes that the reported condition might not be recognized as an occupational disease, the Manager will first advise the worker (or in the case of a deceased worker, their legal representative) and give him or her an opportunity to respond. A decision of the Manager not to recognize the condition as an occupational disease for the purposes of that claim is an appealable decision.

Where the Manager makes an order to recognize the condition as an occupational disease for the purposes of that claim, the claim is returned to the ~~Adjudicator~~ **Board officer** who will determine all other relevant issues, including whether the worker is entitled to benefits provided for under the *Act*. The making of such an order by the Manager is an appealable decision.

Where the Manager is not the Client Services Manager, Occupational Disease Services, he or she will ensure that the Client Services Manager, Occupational Disease Services is provided with written notice of any decisions under policy item #26.04.

Any decision made by the Manager under this ~~section~~ policy item #26.04 is not reviewable by another Board Manager.

The designation or recognition of an occupational disease by inclusion in Schedule B, under section 6(4)(b), or by regulation **6(4.2) where a particular process, trade or occupation is specified, or by regulation of general application**, does not preclude its recognition by order dealing with a specific case if it occurred prior to its designation or recognition by one of the other alternate methods.

The Client Services Manager, Occupational Disease Services, will at least annually provide the ~~Occupational Diseases Standing Committee~~ **Governors** (see policy item #26.70) with a report outlining the number, nature and outcomes of all claims affected by this ~~section~~ policy item #26.04. This information will be made publicly available in the ~~Annual Report of the Occupational Diseases Standing Committee~~.

#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 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).

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 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 policy item #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 policy items #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.

#26.22 *Non-Scheduled Recognition and Onus of Proof*

In some cases a worker may suffer an occupational disease not listed in Schedule B. In other cases a worker may suffer from an occupational disease listed in Schedule B but was not employed in the process or industry described opposite to it in the Schedule. In some cases a worker may suffer a disease not previously designated or recognized by the Board as an occupational disease. Here, the decision on whether the disease is due to the nature of any employment in which the worker was employed, is determined on the merits and justice of the claim without the benefit of any presumption. The same is true if for any other reason the requirements of section 6(3) are not met.

For this purpose the ~~Adjudicator~~ **Board officer** will conduct a detailed investigation of the worker's circumstances including information about the worker, their diagnosed condition, and their workplace activities. The ~~Adjudicator~~ **Board officer** is seeking to gather evidence that tends to establish that there is a causative connection between the work and the disease. The ~~Adjudicator~~ **Board officer** will also seek out or may be presented with evidence which tends to show there is no causative connection. The gathering and weighing of evidence generally is covered in policy items #97.00 through #97.60. The ~~Adjudicator~~ **Board officer** is to examine the evidence to see whether it is sufficiently complete and reliable to arrive at a sound conclusion with confidence. If not, the ~~Adjudicator~~ **Board officer** should consider what other evidence might be obtained, and must take the initiative in seeking further evidence. After that has been done, if, on weighing the available evidence, there is then a preponderance in favour of one view over the other, that is the conclusion that must be reached. Although the nature of the evidence to be obtained and the weight to be attached to it is entirely in the hands of the ~~Adjudicator~~ **Board officer**, to be sufficiently complete the ~~Adjudicator~~ **Board officer** should obtain evidence from both the worker and the employer, particularly if the ~~Adjudicator~~ **Board officer** is concerned about the accuracy of some of the evidence obtained.

Since workers' compensation in British Columbia operates on an inquiry basis rather than on an adversarial basis, there is no onus on the worker to prove his or her case. All that is needed is for the worker to describe his or her personal experience of the disease and the reasons why they suspect the disease has an occupational basis. It is then the responsibility of the Board to research the available scientific literature and carry out any other investigations into the origin of the worker's condition which may be necessary. There is nothing to prevent the worker, their representative, or physician from conducting their own research and investigations, and indeed, this may be helpful to the Board. However, the worker will not be prejudiced by his or her own failure or inability to find the evidence to support the claim. Information resulting from research and investigations conducted by the employer may also be helpful to the Board.

As stated in policy item #97.10, a worker is also assisted in establishing a relationship between the disease and the work by section 99 of the *Act* which provides:

“The Board is not bound to follow legal precedent. Its decision must be given according to the merits and justice of the case and, where there is doubt on an issue and the disputed possibilities are evenly balanced, the issue must be resolved in accordance with that possibility which is favourable to the worker.”

Therefore if the weight of the evidence suggesting the disease was caused by the employment is roughly equally balanced with evidence suggesting non-employment causes, the issue of causation will be resolved in favour of the worker. This provision does not come into play where the weight of the evidence indicates that one possibility is more likely than the other.

If the Board has no or insufficient positive evidence before it that tends to establish that the disease is due to the nature of the worker's employment, the Board's only possible decision is to deny the claim. A speculative possibility that a worker's employment may have caused the disease is not sufficient to establish a causal relationship. The Board can only consider possibilities for which there is evidential support.

#26.55 *Aggravation of a Disease*

Where a worker has a pre-existing disease which is aggravated by work activities to the point where the worker is thereby disabled, and where such pre-existing disease would not have been disabling in the absence of that work activity, the Board will accept that it was the work activity that rendered the disease disabling and pay compensation. Evidence that the pre-existing disease has been significantly accelerated, activated, or advanced more quickly than would have occurred in the absence of the work activity, is confirmation that a compensable aggravation has resulted from the work.

This must be distinguished from the situation where work activities have the effect of drawing to the attention of the worker the existence of the pre-existing disease without significantly affecting the course of such disease. For example, a worker who experiences hand or arm pain due to an arthritis condition affecting that limb will not be entitled to compensation simply because they experience pain in that limb from performing employment activities. Similarly, a worker with a history of intermittent pain and numbness in a hand/wrist due to a pre-existing median nerve entrapment (carpal tunnel syndrome) will not be entitled to compensation just because their work activities also produce the same symptoms. To be compensable as a work-related aggravation of a disease, the evidence must establish that the employment activated or accelerated the pre-

existing disease to the point of disability in circumstances where such disability would not have occurred but for the employment.

Where the pre-existing disease was compensable, the ~~Adjudicator~~ **Board officer** must decide if the aggravation should be treated as a new claim or as a reopening of an earlier claim.

An aggravation of a pre-existing disease which is attributed to a specific event or trauma, or to a series of specific events or traumas, will be treated as a personal injury and will be adjudicated in accordance with the policies set out in Chapter 3. For example, a worker who injures his or her back while performing a series of awkward lifts at work may suffer an aggravation to an underlying degenerative disc disease, or a worker with subacromial bursitis may strain the shoulder while completing a particular lift.

An aggravation of a pre-existing disease which is not attributed to a specific event or trauma, or to a series of specific events or traumas, will be treated as a disease. For example, a worker with a prior history of carpal tunnel syndrome may aggravate such condition to the point of requiring surgery as a result of several weeks of exposure to vibrating equipment.

Where a compensable aggravation of a pre-existing disease occurs, consideration will be given to relief of costs under section 39(1)(e) of the *Act* and to section 5(5) of the *Act*. (See policy item #114.40.)

#26.60 Amending Schedule B

Section ~~6(4)(a)~~ **6(4.1)** of the *Act* provides:

~~“The board may, on the terms and conditions and with the limitations the board deems adequate and proper, add to or delete from Schedule B a disease which the board deems to be an occupational disease, and may in like manner add to or delete from the said Schedule a process or industry.”~~

The Board may, by regulation,

- (a) add to or delete from Schedule B a disease that, in the opinion of the Board, is an occupational disease,**
- (b) add to or delete from Schedule B a process or an industry, and**
- (c) set terms, conditions and limitations for the purposes of paragraphs (a) and (b).**

This provision gives the Board substantial flexibility in its ability to add to or delete from the list of diseases designated or recognized in Schedule B, and to impose whatever terms, conditions or limitations it considers appropriate in doing so. It has the same flexibility in its ability to add to or delete from the descriptions of process or industry set out in the second column.

Claims for all of the diseases in Schedule B will be considered in respect of such disease even if the worker was not employed in the process or industry described opposite to the disease in the second column of Schedule B, but without the benefit of the presumption set out in section 6(3) of the *Act*. See policy item #26.22.

~~#26.70 — Occupational Diseases Standing Committee (ODSC)~~

~~As a standing (or permanent) committee of the Governors, the mandate of the ODSC is to review the occupational disease policies of the Workers' Compensation Board and to make recommendations for change to the Governors. (6)~~

~~Among its primary roles, the committee is to determine whether a probable relationship exists between a disease and an occupational activity in British Columbia and, if so, to make recommendations to the Governors regarding the circumstances in which claims for compensation for that disease should be afforded the presumption provided for under Section 6(3) and Schedule B of the *Workers Compensation Act*. It is also to determine which diseases are to be designated or recognized as occupational diseases other than by inclusion in Schedule B.~~

~~The ongoing mandate of the committee also includes the responsibility to:~~

- ~~(a) — Consider new policy issues which may be brought to the committee's attention by members of the committee, the Governors, WCB personnel or stakeholders in the workers' compensation system and make recommendations to the Governors.~~
- ~~(b) — Conduct periodic reviews of Schedule B to ensure that the Schedule remains consistent with the intent of the ~~Act~~**Act** and advances in medical knowledge, industries and industrial processes and make recommendations to the Governors.~~
- ~~(c) — Conduct periodic reviews of the list of diseases designated or recognized by the Board as occupational diseases under Section 6(4)(b) or by regulation of general application to ensure that the list remains consistent with the intent of the~~

~~Act and advances in medical knowledge, industries and industrial processes and make recommendations to the Governors.~~

- ~~(d) Undertake any other responsibilities which the committee may be directed to undertake by resolution of the Governors.~~

~~The ODSC shall meet at least six times in each calendar year, and at least once every three months. Minutes are kept of all meetings of the ODSC and after being signed and initialed by the Chair are retained by the Office of the Governors. The Chair of the ODSC makes an annual report of accomplishments and works in progress to the Governors for each calendar year.~~

~~It is not a responsibility of the ODSC to make determinations with respect to individual claims.~~

#27.20 Tendinitis/Tenosynovitis and Bursitis Claims Where No Presumption Applies

This section deals with claims where the worker has tendinitis/tenosynovitis or bursitis, but was not at the relevant time “employed in a process or industry mentioned in the second column of Schedule B”.

A claim for compensation will be accepted for a worker who suffers from a disease designated or recognized by the Board as an occupational disease which the evidence establishes as having resulted from employment covered by the *Act*. Where a worker suffers from an occupational disease listed in Schedule B but was not employed in the process or industry described opposite to the disease in the second column of Schedule B, that simply means that there is no presumption of work causation. In that event, the ~~Adjudicator~~ **Board officer** must still determine on the evidence whether the disease was due to the nature of the employment under section 6(1) of the *Act*.

The requirements of the second column of Schedule B are not preconditions or limitations to the acceptance of a claim. There may be other evidence supporting the conclusion that the disease is due to the nature of the worker’s employment. It also follows that the requirements of the second column of Schedule B are not the only matters to be considered for that disease in the adjudication of the claim. It is only where the presumption applies that it may be unnecessary to consider such other matters because work causation will already have been established. Additionally there may be situations where the nature of the work activity is such as would ordinarily raise a likelihood of work causation, but there exists other evidence, which suggests a contrary conclusion. For example, both wrists may be affected by the same condition but the worker only ever used one wrist in performing the work, or the worker may be suffering from an underlying disease which itself is capable of producing the condition for which the claim is made

(such as rheumatoid arthritis producing a wrist tendinitis). The decision in such a case can only be a judgement one makes by weighing the evidence for and against work causation. An assessment of risk factors related to the employment will normally be the most important consideration in these types of claims. However, this is not the only consideration. Non-occupational risk factors may exist relative to the claim, which tend to refute the conclusion which might ordinarily be suggested by an assessment of the work activity. For a discussion of risk factors see policy item #27.40.

In the investigation of a claim for tendinitis/tenosynovitis or bursitis (in circumstances where no presumption applies) it is incumbent on the **Adjudicator Board officer** to seek out evidence of both occupational and non-occupational exposure to risk factors relevant to the causation of the disorder (see policy item #26.21 regarding the approach when a presumption applies). Non-occupational exposures may be present as a result of participating in sports, hobbies, or certain ordinary activities of daily living. The compensability of such a claim depends on whether or not the employment activities (the occupational exposure to risk factors) played a significant role in producing the inflammatory disorder. The occupational exposure need not be the sole or even the predominant cause; it simply needs to have been a significant cause.

Although the risk of developing tendinitis/tenosynovitis or bursitis may be significantly greater where, in the performance of work tasks, two or more risk factors are present at the same time, these inflammatory disorders may result from a particularly frequent, intense or prolonged exposure to a single risk factor. Even though work causation may not be established by virtue of applying the presumption set out in section 6(3) of the *Act*, the **Adjudicator Board officer** may conclude that exposure to a single risk factor (whether described in the second column of Schedule B or not) played a significant role in producing the tendinitis/tenosynovitis or bursitis, and that accordingly the claim meets the requirements of section 6(1) of the *Act*.

In assessing whether or not a tendinitis/tenosynovitis or bursitis condition is due to the nature of a worker's employment, in circumstances where there is evidence of both occupational and non-occupational exposure to risk factors (relevant to the causation of these inflammatory disorders), consideration is given to such matters as:

- the relative frequency, intensity, and duration of exposure to risk factors encountered in connection with the worker's employment compared to those encountered in non-occupational activities;
- whether the intensity of the forces placed on the affected tissues in connection with the worker's employment activities are likely to produce injury (such as a sudden stretching of tendinous tissues) when compared to such likelihood arising from the intensity of forces

encountered in connection with the worker's non-occupational activities;

- the likelihood that the worker's occupational and non-occupational activities may have acted together in the development of the inflammatory disorder in circumstances where the inflamed tissues have had insufficient time to return to a relaxed or resting state due to the combined effects of these activities;
- whether any changes took place in either the employment activities or the non-occupational activities prior to or at the time of onset of symptoms of the inflammatory disorder, noting that performing unaccustomed activities may significantly increase the risk (see reference to "unaccustomed activity" in policy item #27.40);
- whether there is evidence of similar inflammatory disorders occurring in other workers who perform the same type of tasks as those performed by the worker, and whether there is evidence of such disorders occurring in the general population among those who are engaged in the same type of non-occupational activities as those in which the worker is engaged;
- the likelihood that the worker's combined employment activities (where the worker has more than one employment) may have acted together in the development of the inflammatory disorder in circumstances where the inflamed tissues have had insufficient time to return to a relaxed or resting state due to the combined effects of those activities;
- whether the worker has previously suffered injuries, inflammation, or infections associated with the affected tissues, and if so the likely cause of these prior conditions;
- whether there is evidence of a disorder (such as a degenerative tear or infection) at or near the site of the subject condition;
- whether the worker has suffered from any degenerative or systemic disorders (including but not limited to degenerative arthritis, rheumatoid arthritis, gout, systemic lupus erythematosus, connective tissue disease, or inflammatory rheumatological disorder), and if so whether such underlying disorder is the likely cause of the subject inflammatory disorder, or alternatively has had the effect of rendering the worker more susceptible such that shorter, or less frequent, or less intense exposure to risk factors may initiate the subject disorder;
- whether the worker is taking prescription medications, is undergoing any therapy or treatment for any other condition, or is pregnant, and if so whether this is a likely cause of the subject disorder or alternatively has had the effect of rendering the worker more susceptible.

#27.35 *Unspecified or Multiple-Tissue Disorders*

A worker may suffer from a disorder which is not categorized as any of the clinical entities described in policy items #27.11 through #27.34. He or she may suffer from an unspecified symptom complex, perhaps affecting multiple body regions. The attending physician(s) may state that the worker suffers from “repetitive strain injury”, “cumulative trauma disorder”, “overuse syndrome”, “occupational cerviobrachial syndrome”, or the like, due to the not easily categorized clinical findings. The worker and/or the attending physician may believe that the resulting disability is caused or aggravated by employment activities, even though no event or trauma, or series of events or traumas occurred.

Such a claim must be considered on its own merits. Such consideration takes place even though a clinical entity familiar to the Board has not been diagnosed. The matters referred to in policy item #26.04 (recognition by order dealing with a specific case) would apply to such a claim. The ~~Adjudicator~~ **Board officer** should, however, make whatever inquiries they consider appropriate in the circumstances of the claim to determine whether the worker in fact suffers from one or more of the disorders referred to in policy items #27.11 through #27.34, particularly if the worker’s attending physician has diagnosed the disorder using one of the broad collective terms such as “repetitive strain injury”.

#28.00 **CONTAGIOUS DISEASES**

There are a number of contagious diseases recognized by the Board as occupational diseases either in Schedule B or by regulation. See policy item #26.03.

A worker is not entitled to compensation simply because he or she contracted the disease while at work. For the disability to be compensable, there must be something in the nature of the employment which had causative significance.

Thus, in these cases of contracting a contagious disease at work, it is a requirement for compensation that either:

1. The nature of the employment created for the worker a risk of contracting a kind of disease to which the public at large is not normally exposed; or
2. The nature of the employment created for the worker a risk of contracting the disease significantly greater than the ordinary exposure risk of the public at large. In this category, it would not be sufficient to show only that the worker meets more people than workers in other occupations, but it would be significant to show that in the particular employment the worker meets a much larger

proportion of people with the particular disease than is found in the population at large.

It may help to illustrate these principles:

Example 1 — Suppose an outbreak of meningitis is affecting the community at large. The disease may be spreading at places of work, in the home, at schools, at churches, at social events, at sporting events, and every place where people meet. The Board would not, with regard to each worker suffering from the disease, seek evidence to decide whether that worker contracted the disease at work or elsewhere. The disease would be viewed as a public health problem, not a disease due to the nature of any particular employment, and compensation for the workers involved must be found under general systems relating to sickness benefits, not under workers' compensation.

Example 2 — Suppose there are three cases of meningitis reported in the community. Victim 1 is a tourist from abroad. Victim 2 is a nurse who was engaged in the treatment of Victim 1. Victim 3 is a nurse who was working closely with Victim 2. Here the employment involved a risk of contracting a disease of a kind to which the public at large are not exposed, and the contracting of the disease by Victims 2 and 3 was due to the nature of their employment.

Example 3 — Suppose the disease is one of a low order of contagiousness, and one that does not normally spread through the public at large, but which can be contagious when there is exceptionally close contact, such as may come from two workers constantly holding materials together, or sharing the same room. If, in this situation, a worker catches the disease from a fellow worker, from the employer, or from a client of the employer, with whom the worker has been placed in exceptionally close proximity, it may well be concluded that the disease is due to the nature of the employment. For example, where two workers share sleeping quarters on board a ship, and one contracts tuberculosis from the other, the worker who contracted tuberculosis from the shipmate may be compensated.

Example 4 — Suppose a courier develops mononucleosis and claims compensation on the ground that in the job he or she meets more people than workers in most occupations and therefore has a greater risk of exposure to contagious diseases. Such a claim would not be allowed. The disease is one that spreads in the population at large, and claims of this nature cannot be allowed or denied by estimating the extent to which each employment involves mixing with the public.

Example 5 — Suppose a maintenance mechanic from British Columbia is sent to repair machinery in use by a customer overseas. While there, the worker contracts a disease that is commonly found among the population at large in that country, but which is not a common disease in British Columbia. That would be

compensable. The nature of the employment has exposed the worker to a disease of a kind to which the people of this province are not normally exposed.

There is no requirement that a worker with a contagious disease should name a contact, but there should be some evidence of a contact. For example, if the worker was employed in a hospital, and there were three patients known to be in his or her working area of the hospital suffering from the disease, an inference may be drawn from the circumstantial evidence that the worker contacted the disease there, even though they may not remember the names of the patients, or may not remember whether they actually had contact with them. The strength of this circumstantial evidence would obviously depend partly on the strength of evidence relating to alternative possibilities, such as whether the disease is extremely rare or one that is common in the community elsewhere. In other words, where there is no solid evidence of actual contact, the ~~Adjudicator~~ **Board officer** must still weigh the possibilities on the circumstantial evidence of possible contact and not simply reject the claim without weighing the possibilities.

#29.20 Asthma

Schedule B lists “Asthma” as an occupational disease. The process or industry listed opposite to it is “Where there is exposure to

- (1) western red cedar dust; or
- (2) isocyanate vapours or gases; or
- (3) the dust, fume of vapours of other chemicals or organic material known to cause asthma.”

There are many substances which are either known to cause asthma in a previously healthy individual or of aggravating or activating an asthmatic reaction in an individual with a pre-existing asthma condition. The significance of occupational exposures to these substances may be complicated by evidence that the worker is exposed to such substances in both occupational and non-occupational settings. In the investigation of the claim, the ~~Adjudicator~~ **Board officer** should seek evidence of whether the worker is exposed to any sensitizing substances (obtaining where available any material safety data sheets), on the nature and extent of occupational and non-occupational exposure to such substances, and on whether there is any correlation between apparent changes in airflow obstruction/responsiveness and exposure to such substances. Additional medical evidence may be available in the form of airflow monitoring, expiratory spirometry, inhalation challenge tests, and skin testing for sensitization.

A pre-existing asthma condition is not compensable unless such underlying condition has been significantly aggravated, activated, or accelerated by an

occupational exposure. A worker is not entitled to compensation where his or her pre-existing asthma condition is triggered or aggravated by substances which are present in both occupational and non-occupational settings unless the workplace exposure can be shown to have been a significant cause of an aggravation of the condition. A speculative possibility that a workplace exposure to such a substance has caused an aggravation of the pre-existing asthma is insufficient for the acceptance of a claim.

Compensation is not payable because a worker develops an allergy or sensitivity to a substance or substances as a result of their employment. Compensation may be paid where a workplace exposure to the allergen or substance results in an asthmatic reaction.

In the case of a compensable asthma or a reaction of the respiratory tract to a substance with irritating or inflammatory properties, temporary disability benefits are payable until the temporary disability ends or until the worker's symptoms become stabilized. Where the worker's symptoms do not entirely resolve and he or she is left with a permanent impairment of the respiratory system, a disability award may be granted. However, no such award can be made when the worker's symptoms have resolved and they are simply left with the underlying allergy or sensitivity. Not only is the worker not now suffering from the occupational disease set out in Schedule B, but they are not disabled from working. The Board cannot grant a permanent disability award to a person who has the same physical capabilities as they had previous to the occurrence of the occupational disease, but who is precluded from a limited number of occupations because of a remaining allergy or sensitivity. No permanent disability award can be made to a worker with a pre-existing condition when they have returned to their pre-exposure state.

Where a worker who is allergic to western red cedar dust declines to take any employment which involves exposure to that dust, such worker is taking a preventive measure. Compensation is not payable for such preventive measures. However, rehabilitation assistance may be provided to a worker in this situation (see policy item #86.30).

#29.42 *Meaning of Disabled from Silicosis*

The restrictions contained in section 6(1) do not apply to silicosis. It is, therefore, not a requirement of a claim for silicosis that there should be a lessened capacity for work, or that the worker should be disabled from earning full wages at the work at which he or she was employed.

It is a requirement in a claim for silicosis that the worker be "disabled" from the silicosis, or from silicosis complicated with tuberculosis. There is no definition of "disability" in the *Act*, and the Board has not attempted any comprehensive definition. If a worker has a condition of an internal organ which is so slight as to

be unnoticeable to that person, and which causes no significant discomfort or other ill effects, that is not a “disability”.

It can be difficult to fix the date for commencing the ~~pension~~ **permanent disability award** when there is no change of jobs or reduction in earnings to mark the inception of the disability. No general rules can be laid down for this purpose. The ~~Adjudicator~~ **Board officer** must decide the question according to the available evidence. However, if the evidence does not clearly establish when the disability commenced, and there is no evidence of the existence of a disability prior to the receipt of a particular medical report, the ~~Adjudicator~~ **Board officer** may properly decide that, according to the available evidence, the disability commenced on the date of the medical examination which was the subject of that report.

There may also be a difficulty in fixing the worker’s average earnings when such worker is not employed at the time when the disability commenced. The ~~Adjudicator~~ **Board officer** should generally refer back to the employment or employments in which the worker was most recently engaged and base any ~~pension~~ **permanent disability award** on the previous earnings thus discovered.

#29.50 Presumption Where Death Results from Ailment or Impairment of Lungs or Heart

Section 6(11) provides that:

“Where a deceased worker was, at the date of his death, under the age of 70 years and suffering from an occupational disease of a type that impairs the capacity of function of the lungs, and where the death was caused by some ailment or impairment of the lungs or heart of non-traumatic origin, it must be conclusively presumed that the death resulted from the occupational disease.”

This provision does not apply to deaths occurring before July 1, 1974.

The question whether the deceased suffered from an “. . . occupational disease of a type that impairs the capacity of function of the lungs, . . .” is not determined by the failure or success of any claim made in the deceased’s lifetime. Thus, the Board can decide that there was such a disease at the date of death, even though it disallowed a claim made by the worker in respect of that disease. Alternatively, it can now conclude that there is no such disease, notwithstanding it accepted a claim made by the worker before his or her death in respect of the same condition. This can well happen because often there is new evidence available following a death, typically in the form of an autopsy report which may be the best evidence available.

Once the age of the worker and the conditions set out in section 6(11) have been established, it is conclusively presumed that the death resulted from the occupational disease. This presumption cannot be rebutted by contrary evidence.

If the deceased worker was over 70 years of age or for some other reason the presumption cannot be applied, medical and other evidence must be examined to determine whether the death resulted from the occupational disease.

#30.20 Gastro-intestinal Cancer

Schedule B lists “Gastro-intestinal cancer (including all primary cancers associated with the oesophagus, stomach, small bowel, colon and rectum excluding the anus, and without regard to the site of the cancer in the gastro-intestinal tract or the histological structure of the cancer)” as an occupational disease.

The process or industry described opposite to Gastro-intestinal cancer is “Where there is exposure to asbestos dust if during the period between the first exposure to asbestos dust and the diagnosis of gastro-intestinal cancer there has been a period of, or periods adding up to, 20 years of continuous exposure to asbestos dust and such exposure represents or is a manifestation of the major component of the occupational activity in which it occurred.”

Gastro-intestinal cancer suffered by a worker who has not been exposed to asbestos fibres in the course of their employment, or whose exposure to such fibres does not substantially have the duration, continuity and extent described in the second column of Schedule B, will not normally be considered to be due to employment.

Where there has been less than 20 years of continuous exposure to asbestos fibres, such that the presumption in section 6(3) does not apply, but there has been substantial compliance with the requirements of the second column of Schedule B, the ~~Adjudicator~~ **Board officer** will consider whether the evidence indicates that the gastro-intestinal cancer is due to the nature of the worker’s employment. Whether or not the compliance is substantial is a matter of judgment for the ~~Adjudicator~~ **Board officer**. The greater the gap between the worker’s period of exposure and the 20-year period, the less likely is the compliance to be substantial and the less likely is the disease to be due to the nature of the employment. (10)

#30.50 Contact Dermatitis

Schedule B lists "Contact dermatitis" as an occupational disease. The process or industry described opposite to it is "Where there is excessive exposure to irritants, allergens or sensitizers ordinarily causative of dermatitis".

The payment of temporary disability benefits and permanent disability **awards** ~~pensions~~ are subject to the same general principles as are set out in policy item #29.20 in respect of asthma or a reaction of the respiratory tract to a substance with irritating or inflammatory properties. Therefore, there is no disability for the purpose of the *Act* unless the worker has an actual loss of body function or physical impairment resulting from the dermatitis which causes the worker to be disabled from earning full wages at the work at which he or she was employed.

Temporary disability benefits are payable while the disability is a temporary one, but cease when it disappears or stabilizes or becomes permanent. If the worker's symptoms do not entirely resolve and they are left with a permanent impairment, a disability award may be granted. However, neither temporary disability benefits nor a permanent disability **award** ~~pension~~ is payable simply because the worker has developed a susceptibility to react to a certain substance as a result of his or her work which causes periods of temporary impairment if he or she is exposed to the particular substance, but otherwise causes no complaints. Rehabilitation assistance may be provided to assist the worker in obtaining alternative employment which does not expose him or her to the substance in question (see policy item #86.30).

#31.00 HEARING LOSS

There are two bases on which compensation can be paid for hearing loss:

- (a) If the hearing loss is traumatic and work-related, compensation is paid as with any other injury under section 5(1) and, if a permanent disability results, a ~~pension is awarded~~ **permanent disability award is granted** in accordance with the scale provided for in the Permanent Disability Evaluation Schedule (for hearing loss that is secondary to an injury see policy item #22.00).
- (b) If the hearing loss has developed gradually over time as a result of exposure to occupational noise, it is treated as an occupational disease. However, the provisions of section 6 do not apply unless the worker ceased to be exposed to causes of hearing loss prior to September 1, 1975. In all other cases, section 7 of the *Act* applies. If the provisions of section 6 of the *Act* apply to the claim, the worker may be

entitled to the payment of health care in the form of hearing aids even if they were not disabled from earning full wages at the work at which they were employed (see policy item #26.30).

Section 7(1) provides that “Where a worker suffers loss of hearing of non-traumatic origin, but arising out of and in the course of employment . . ., that is a greater loss than the minimum set out in Schedule D, the worker is entitled to compensation . . .” Schedule D is set out in policy item #31.40.

Schedule B lists “Neurosensory hearing loss” as an occupational disease. Medical research indicates that it is only hearing loss of a neurosensory nature which is caused by exposure to noise over time (although this type of hearing loss may also result from other causes unrelated to exposure to noise). As a result, the Board’s responsibility is limited to compensating workers for occupationally-induced neurosensory hearing loss. This is further emphasized in section 7 of the *Act* which requires that the loss of hearing be of non-traumatic origin and that it arise out of and in the course of employment.

In situations where a hearing loss is partly due to causes other than occupational noise exposure, the total hearing impairment is initially measured using pure tone air conduction pursuant to Schedule D. Having done this, in order to comply with the *Act*, other measures, such as bone conduction tests, are carried out to assess the portion of the total loss which is neurosensory and the portion which is due to other causes.

Having made this determination, the factual evidence on the claim is then assessed to determine whether all, or only part of, the neurosensory loss is due to occupational exposure to causes of hearing loss in British Columbia as required by the *Act*. The resulting portion of the worker’s total impairment is then assessed for an ~~pension~~ **award** using the percentage ranges listed in Schedule D.

Tinnitus alone is not considered to be a ~~pensionable~~ condition **for which a permanent disability award can be granted**. It is recognized, however, that tinnitus, in combination with a ~~pensionable~~ **permanent** degree of hearing loss, may have an impact on a worker’s employability and affect the amount of the resulting ~~pension~~-**award**.

#31.10 Date of Commencement of Section 7

Section 7(5) of the *Act* provides as follows:

“Compensation under this section is not payable in respect of a period prior to September 1, 1975; but future compensation under this section is payable in respect of loss of hearing sustained by exposure to causes of

hearing loss in the Province either before or after that date, unless the exposure to causes of hearing loss terminated prior to that date.”

Section 7 expressly applies only to hearing loss of non-traumatic origin which can only mean loss of hearing over some period of time as a cumulative effect. Therefore “terminated” as used in section 7(5) means the end once and for all of a course of exposure to causes of hearing loss. Exposure is not terminated as long as the worker continues to undergo exposure arising out of and in the course of the worker’s employment in British Columbia, no matter how intermittent or how far apart periods of exposure might be. Only retirement or other cessation from employment in industries which expose the worker to causes of hearing loss qualify as “termination”. Subsequent exposure for any period of time in bona fide employment allows for consideration of compensation under section 7.

Only exposure to noise in industries under Part 1 of the *Act* after September 1, 1975 should be considered to determine whether or not a worker qualifies for compensation under section 7.

If a worker’s exposure to causes of hearing loss terminated prior to September 1, 1975, no compensation is payable under section 7 whatever may be the reasons for this termination. No exception can be made if, for instance, the termination came about because a previous compensable injury forced the worker to leave his or her employment. A worker whose exposure ceased prior to September 1, 1975 may be entitled to health care (hearing aids) under section 6 of the *Act*.

#31.20 Amount and Duration of Noise Exposure Required by Section 7

A claim is acceptable where, as a minimum, evidence is provided of continuous work exposure for two years or more at eight hours per day at 85 dBA or more, and when other evidence does not disclose any cause of hearing loss not related to work. The Board considers it reasonable to set the 85 dBA minimum standard for compensation purposes and then to allow a restricted measure of discretion for the acceptance of claims where the evidence is abundantly clear that the worker is extraordinarily susceptible and has been affected by exposure to noise at a lesser level.

The *Industrial Health & Safety Regulations* in effect at the time of the enactment of section 7 set 90 dBA for eight hours of worker exposure as the maximum permissible limit for noise in industry. However, it was recognized from all available information that to retain this standard for claims purposes would result in an inability to accept claims on behalf of approximately 15% of the worker population who are unusually susceptible to ill effects from noise below 90 dBA. As a result the *Industrial Health & Safety Regulations* effective on January 1st,

1978, retained 90 dBA criterion for the employment environment, but the 85 dBA standard was retained for compensation purposes. (11)

The Board does not accept evidence of the wearing of individual hearing protection as a bar to compensation. However, in the case of soundproof booths, where evidence shows that the booth was used regularly, was sealed and was generally effective, it may be difficult to accept that the work environment in question contributed to the hearing loss demonstrated.

Where the exposure to occupational noise in British Columbia is 5% or less of the overall exposure experienced by the worker, the claim is disallowed. Such a minimal degree of exposure is insufficient to warrant a ~~pensionable degree of disability~~ **acceptance of the claim**. Where the exposure to occupational noise in British Columbia is 90% or greater of the total exposure, a claim is allowed for the total hearing loss suffered by the worker. For percentages between 5 and 90, the claim is allowed for only that percentage of the hearing loss which is attributable to occupational noise in British Columbia, and the Board will accept responsibility for all health care costs related to the total hearing loss including the provision of hearing aids.

It has been suggested that after 10 years of exposure further loss is negligible. Generally speaking, the evidence is that the first 10 years has a significant effect at higher frequencies. However, where lower frequencies are concerned (up to 2,000 Hz.) hearing loss continues after that time and may, in fact, accelerate in those later years. Therefore, since the disability assessment under Schedule D relies on frequencies of 500, 1,000 and 2,000 Hz., no adjustments for duration of exposure are made.

#31.30 Application for Compensation under Section 7

Section 7(6) provides that “An application for compensation under this section must be accompanied or supported by a specialist’s report and audiogram or by other evidence of loss of hearing that the ~~h~~**B**oard prescribes”.

Where a worker has already applied for compensation for hearing loss under section 6, a separate application under section 7 may sometimes be required. However, it will not be insisted upon if it serves no useful purpose. Therefore, no separate application need be made where all the evidence necessary to make a reasonable decision is available without it. On the other hand, although the worker need not submit an application form, he must still take some action to appeal or have his claim under section 6 reconsidered under section 7.

The original application need not be accompanied by a report and audiogram by a physician outside the Board. The Board will obtain the necessary medical evidence.

#31.40 Amount of Compensation under Section 7

No temporary disability payments are made to workers suffering from non-traumatic hearing loss.

Workers who develop non-traumatic noise induced hearing loss are, subject to the time periods referred to in section 23.1 of the Act, assessed for a permanent disability award under section 23 of the Act.

Hearing loss ~~pensions~~ **permanent disability awards** are determined on the basis of audiometric tests conducted at the Audiology Unit of the Board or on the basis of prior audiometric tests conducted closer in time to when the worker was last exposed to hazardous occupational noise if in the Board's opinion the results of such earlier tests best represent the true measure of the worker's hearing loss which is due to exposure to occupational noise.

Section 7(3.1) of the *Act* provides:

“The ~~b~~Board may make regulations to amend Schedule D in respect of

- (a) the ranges of hearing loss,
- (b) the percentages of disability, and
- (c) the methods or frequencies to be used to measure hearing loss.”

Where the loss of hearing amounts to total deafness measured in the manner set out in Schedule D, but with no loss of earnings resulting from the loss of hearing, section 7(2) provides that compensation shall be calculated as for a disability equivalent to 15% of total disability. Where the loss of hearing does not amount to total deafness, and there is no loss of earnings resulting from the loss of hearing, section 7(3) provides that compensation shall be calculated as for a lesser percentage of total disability, and, unless otherwise ordered by the Board, shall be based on the percentages set out in Schedule D. Schedule D is set out below.

SCHEDULE D

Non-Traumatic Hearing Loss

Complete loss of hearing in both ears equals 15% of total disability. Complete loss of hearing in one ear with no loss in the other equals 2.5% of total disability.

Loss of Hearing in Decibels Measured in Each Ear in Turn	Percentage of Total Disability	
	Ear Most Affected PLUS Ear Least Affected	
0-27	0	0
28-32	0.3	1.2
33-37	0.5	2.0
38-42	0.7	2.8
43-47	1.0	4.0
48-52	1.3	5.2
53-57	1.7	6.8
58-62	2.1	8.4
63-67	2.6	10.4
68 or more	3.0	12.0

The loss of hearing in decibels in the first column is the arithmetic average of thresholds of hearing measured in each ear in turn by pure tone, air conduction audiometry at frequencies of 1000, 2000 and 3000 Hertzian waves, the measurements being made with an audiometer calibrated according to standards prescribed by the Board.

In assessing permanent disability awards under section 7, there is no automatic allowance for presbycusis. In some cases, however, the existence of presbycusis may be relevant in deciding whether the worker has suffered a hearing loss due to their employment. The age adaptability factor is not applied to awards made under section 7.

Where a worker has an established history of exposure to noise at work, and where there are other non-occupational causes or components in the worker's loss of hearing, and where this non-occupational component cannot be accurately measured using audiometric tests, then "Robinson's Tables" will apply. "Robinson's Tables" will only be applied where there is some positive evidence of non-occupational causes or components in the worker's loss of hearing (for example, some underlying disease) and will not be applied when the measured hearing loss is greater than expected and there is only a speculative possibility without evidential support that this additional loss is attributable to non-occupational factors.

“Robinson’s Tables” were statistically formulated to calculate the expected hearing loss following a given exposure to noise. In applying these tables, the cumulative period of noise exposure is calculated. A factor for aging is then added. For ~~pension~~ **permanent disability award** purposes, the resulting calculation is then compared on “Robinson’s Tables” to the worst 10% of the population (i.e., at the same levels and extent of noise exposure, 90% of individuals will have better hearing than the worker).

In some cases, it will be found that a worker has already suffered a conductive hearing loss in one ear, unrelated to their work, which might well have afforded some protection against work-related noise-induced hearing loss in that ear. The normal practice in this situation would be to allocate the higher measure in Schedule D (the “ear least affected” column) to the other ear which has the purely noise-induced hearing loss.

A difficulty occurs where the worker is not employed at the time when their disability commenced. If there are no current earnings on which to base the ~~pension~~ **permanent disability award**, the ~~Adjudicator~~ **Board officer** should generally refer back to the employments in which the worker was most recently engaged and base the ~~pension~~ **award** on their previous earnings thus discovered.

If the worker is retired and under the age of 63 years as of the commencement of the hearing loss permanent disability award, periodic payments are made until the date the worker reaches 65 years of age. If the worker is retired and is 63 years of age or older as of the commencement of the hearing loss permanent disability award, periodic payments are made for two years following such date. See policy item #41.00, Duration of Permanent Disability Periodic Payments.

#31.50 ~~Loss of Earnings Awards Compensation under~~ Section 7

~~Where loss or reduction of earnings results from the loss of hearing, Section 7(4) provides that compensation shall be calculated by reference to the projected loss of earnings, or by another method of estimating loss of earnings or impairment of earning capacity that the Board adopts; but in no case shall the compensation be less than that provided under Subsection (2) or (3).~~

Section 7(4) provides:

If a loss or reduction in earnings results from the loss of hearing, the worker is entitled to compensation for total or partial disability as established under this Part.

Section 7(4.1) also provides:

Compensation paid for a worker's loss of hearing under subsection (4) must not be less than the amount determined under subsection (2) or (3).

Compensation is not payable simply because a worker changes employment in order to preclude the development of hearing loss. As with any other occupational disease, there must be ~~physical~~ **functional** impairment from the disease before there can be compensation in any form. In other words, compensation is payable for a disability that has been incurred, not for the prevention of one that might occur.

Where a noise-induced hearing loss has been incurred, if a worker then changes employment to a lower paid but quieter job, that triggers consideration by the Board of a ~~loss of earnings pension~~ **permanent disability assessment** notwithstanding that it may seem reasonable that with hearing protection, the worker may have stayed at the former employment. There is no obligation to stay in the employment with hearing protection rather than take lower paying work and claim compensation. Compensation in such cases is, as in all other cases, based on the ~~physical impairment~~ **section 23(1) method of permanent disability assessment**. The drop in earnings may be the triggering device that renders the worker eligible for compensation, but it is not part of the formula for calculating the amount.

The duration of entitlement to permanent disability periodic payments is established under section 23.1 of the Act and discussed in policy item #41.00, Duration of Permanent Disability Periodic Payments.

#31.60 Reassessment of Award under Section 7

Where the loss of hearing of a worker **who is** in receipt of a ~~pension~~ **permanent disability award** under section 7 is retested **on or after June 30, 2002**, the procedure is as for the initial assessment of the ~~pension award~~. Where on retest, a different finding is recorded from that on which the initial ~~pension award~~ was set, the following procedure has been adopted:

1. Where the retest records a deterioration in the worker's hearing, the ~~pension award~~ is increased if the new findings warrant an increase under Schedule D of the Act.
2. If the retest suggests there is an improved level of hearing than that upon which the original ~~pension award~~ was set, but the improvement is within a range, up to and including 10 decibels, no change in the worker's ~~pension award~~ is undertaken.

3. If the retest shows an improvement in the worker's hearing of a degree greater than 10 decibels, the worker's ~~pension~~ **award** is reassessed on the basis of this new finding. Where this occurs, two further considerations would apply.
 - (a) Where the worker has been paid the ~~pension~~ **award** in the form of a lump-sum payment, the worker is advised in writing that his or her hearing has improved to the point where such a payment would no longer appear justified or appropriate. However, in those cases, no attempt is made by the Board to seek a refund.
 - (b) Where the worker's ~~pension~~ **award** is being paid in the form of a periodic monthly payment, the payments are reduced or terminated, whichever is applicable, and the worker is informed in writing of the reasons and of rights of appeal.

A worker who has ceased to have entitlement to a permanent disability award in accordance with the provisions of section 23.1 of the Act (see policy item #41.00) will not be retested by the Board.

#31.70 Compensation for Non-Traumatic Hearing Loss under Section 6

A worker will only be entitled to compensation for non-traumatic hearing loss under section 6(1) if their exposure to causes of hearing loss terminated prior to September 1, 1975. "Neurosensory hearing loss" is one of the occupational diseases listed in Schedule B of the *Act*. The process or industry described opposite to it is "Where there is prolonged exposure to excessive noise levels".

Section 55 of the *Act* sets out the time limits within which an application for compensation must be filed. Subsection (4) of the present section 55 provides:

"This section applies to an injury or death occurring on or after January 1, 1974 and to an occupational disease in respect of which exposure to the cause of the occupational disease in the Province did not terminate prior to that date."

The result of this provision is that where a worker's exposure to causes of hearing loss terminated prior to January 1, 1974, the present section 55 does not apply and one must look to the provision which was repealed on the enactment of this section.

Under the previous section 55 (then numbered 52), a claim is, subject to ~~S~~subsection (4), barred unless an application for compensation, or in the case of health care, proof of disablement, is filed within one year after the day upon

which disablement by industrial disease occurred. The Board has no general power to waive these requirements and extend the time period in which an application must be submitted beyond the period set out in section 52(4). To determine what is meant by “disablement” in this provision, one must refer back to section 6(1) of the *Act* which provides in part that no compensation, other than health care, is payable in respect of an occupational disease unless the worker is “. . . thereby disabled from earning full wages at the work at which the worker was employed . . .” The one-year time period under the previous and current section 55 does not begin to run until the worker becomes disabled from earning full wages within the meaning of section 6(1). It follows that in cases where the exposure to causes of hearing loss terminated prior to January 1, 1974, and no disablement within the meaning of section 6(1) has yet occurred, health care can always be provided, whether or not an application for compensation has been received from the worker and regardless of the length of time which has elapsed since their exposure terminated. Once the disablement from earning full wages occurs, the worker then has one year to submit an application for compensation (if they have not already done so) or proof of disablement. If no application for compensation or proof of disablement has been received by the end of this period, the worker’s claim becomes completely barred even though they may previously have received compensation in the form of health care. If the worker submits proof of disablement, but no application for compensation, by the end of this period only compensation in the form of health care is payable. (12)

#31.80 Commencement of ~~Pension Benefits~~ Permanent Disability Periodic Payments under Sections 6 and 7

~~4.~~The following applies to claims for loss of hearing of non-traumatic origin.

1. Where compensation is being awarded under section 6, then, subject to section 55, ~~pension benefits~~ **permanent disability awards** shall be calculated to commence as of the date upon which the worker first became disabled from earning full wages at the work at which the worker was employed.
- ~~32.~~ Where compensation is being awarded under section 7 in respect of a loss of earnings or impairment of earnings capacity, then, subject to section 55, ~~pension benefits~~ **permanent disability awards** shall be calculated to commence as of the date when the worker first suffered such loss of earnings or impairment of earnings capacity, or as of September 1, 1975, whichever is the later.
43. Where compensation is being awarded under section 7 but not in respect of any loss of earnings or impairment of earning capacity, then, subject to section 55, ~~pension benefits~~ **permanent disability awards** shall be calculated to commence as of the earlier of either

the date of application or the date of first medical evidence that is sufficiently valid and reliable for the Board to establish a ~~pensionable~~**compensable** degree of hearing loss under Schedule D of the *Act*. Where the date of application is used as the commencement date, subsequent testing must support a ~~pensionable~~**compensable** degree of hearing loss as of the date of application. In no case will ~~pension~~**award** benefits under section 7(3) commence prior to September 1, 1975.

#31.90 Assessment of Pensions Permanent Disability Awards for Traumatic Hearing Loss under Section 5(1)

Disabilities arising from traumatic hearing loss covered by section 5 of the *Act* are assessed in accordance with the Permanent Disability Evaluation Schedule, Items 91 to 103. See Appendix 4, pages A4-6 and A4-7.

To determine the percentage of disability in a case of bilateral traumatic hearing loss, a calculation is first made of the average hearing thresholds in the three frequencies of the speech range, i.e. 500 Hz, 1,000 Hz, and 2,000 Hz. A deduction is then made of 0.5 decibels for each year the claimant's age exceeds 50 to allow for presbycusis. This is done for each ear.

The net decibel loss in each ear is then translated into a percentage of disability by taking the nearest figure in the schedule. For example, if the net loss is 48 decibels, the percentage for 50 decibels is taken, i.e. 1.3%. An enhancement factor is also applied. This involves adding to the percentage of disability which the schedule allots to the poorer ear nine times the percentage it allots to the better ear. (13)

#32.10 Psychological/Emotional Conditions

The Board does accept claims for personal injury where the injury consists of a psychological condition or **where** the psychological condition is a consequence of a ~~physical injury~~**compensable personal injury or occupational disease**. (14) However, the Board has not recognized any psychological or emotional conditions as occupational diseases related to employment.

#32.50 "Date of Injury" for Occupational Disease

For purposes of establishing a wage rate on a claim for occupational disease (determining the average earnings and earning capacity of the worker at the time of the injury), the ~~Adjudicator~~**Board officer** will consider the occurrence of the injury as the date the worker first became disabled by such disease. A worker

will be considered disabled for this purpose when they are no longer able to perform their regular employment duties and as such would in the ordinary course sustain a loss of earnings as a result. This date may or may not correspond with the date the worker was first diagnosed with the occupational disease.

For administrative purposes, such as assigning a claim number, the date of the worker's first seeking treatment by a physician or qualified practitioner for the occupational disease is the one used. For example, this date will be used where there is no period of disability. Where the worker's condition was not at that time diagnosed as an occupational disease, the relevant date is the date the occupational disease is first diagnosed. These dates may also, in the absence of evidence to the contrary, be used as the date of disablement for the purpose of determining compensation entitlement under section 55 of the Act.

#32.56 *Applicants Who File Within Three Years*

The Board may consider paying compensation benefits even though a person applies more than one year after the death or disablement due to the occupational disease if:

- he or she applies within three years after the death or disablement, and
- special circumstances precluded applying within one year.

Section 55(3) says:

- (3) If the Board is satisfied that there existed special circumstances which precluded the filing of an application within one year after the date referred to in subsection (2), the Board may pay the compensation provided by this Part if the application is filed within 3 years after that date.

For a discussion of special circumstances, see policy item #93.22.

If special circumstances do not exist, the Board cannot consider the claim, unless it meets section 55(3.2), because the application will be out of time.

#32.57 *Applicants Who File Beyond Three Years*

A person who applies more than three years after the date of death or disablement due to the occupational disease might still receive compensation benefits under section 55(3.1). If special circumstances precluded applying within one year, the Board may still consider starting compensation benefits from the date the Board received the application. However, the Board cannot

consider compensation benefits for periods before that date, unless the claim meets section 55(3.2).

Section 55(3.1) says:

- (3.1) The Board may pay the compensation provided by this Part for the period commencing on the date the Board received the application for compensation if
 - (a) the Board is satisfied that special circumstances existed which precluded the filing of an application within one year after the date referred to in subsection (2), and
 - (b) the application is filed more than 3 years after the date referred to in subsection (2).

As stated before, if special circumstances do not exist, the Board cannot consider the claim, unless it meets section 55(3.2), because the application will be out of time.

#32.58 *Newly Recognized Occupational Diseases*

As noted in policy item #25.00, it is often more difficult to determine whether a person's employment caused a disease than to determine whether it caused a personal injury. Our knowledge about the role a particular kind of employment may have in causing various diseases changes over time. In recognition of this difficulty, part of section 55 applies only to claims for occupational disease.

The Board may consider paying compensation benefits for a death or disablement due to an occupational disease if all three of the following conditions apply:

1. At the time of the worker's death or disablement, the Board does not have sufficient medical or scientific evidence to recognize the disease as an occupational disease for this worker's kind of employment (even though the Board may have recognized it as an occupational disease for other kinds of employment).
2. The Board subsequently obtains sufficient medical or scientific evidence to cause it to recognize the disease as an occupational disease for this worker's kind of employment.
3. The application for compensation is made within three years after the date the Board recognized the disease as an occupational disease for this worker's kind of employment.

Section 55(3.2) says:

- (3.2) The ~~h~~Board may pay the compensation provided by this Part if
- (a) the application arises from death or disablement due to an occupational disease,
 - (b) sufficient medical or scientific evidence was not available on the date referred to in subsection (2) for the ~~h~~Board to recognize the disease as an occupational disease and this evidence became available on a later date, and
 - (c) the application is filed within 3 years after the date sufficient medical or scientific evidence as determined by the ~~h~~Board became available to the ~~h~~Board.

If, after July 1, 1974, and before August 26, 1994, the Board has considered an application and has determined that all or part of the claim cannot be paid because of the wording of section 55 then in effect, the Board may now under section 55(3.3) reconsider the claim and pay compensation for those periods previously denied if it meets the requirements of section 55(3.2).

Section 55(3.3) says:

- (3.3) The ~~h~~Board may apply subsection (3.2) to an application in respect of a death or disablement from an occupational disease that the ~~h~~Board previously considered since July 1, 1974 under the equivalent to this section.

For example, in the 1970s sufficient medical or scientific evidence was not available for the Board to recognize an association between exposure to coal tar pitch volatiles in aluminum smelters and an excess risk of bladder cancer. It was not until the late 1980s that sufficient evidence became available for the Board to recognize such an association. (However, the Board had earlier recognized that there was an association between bladder cancer and prolonged exposure to certain chemicals used primarily in the manufacture of rubber and dyes. In 1980 “primary cancer of the epithelial lining of the urinary bladder” was added to Schedule B, with a corresponding presumption in favour of causation where the worker had prolonged exposure to any of three listed chemicals.) On March 13, 1989, the Board issued a policy directive recognizing bladder cancer as an occupational disease for workers employed in aluminum smelting, dependent on the concentration and length of exposure to coal tar pitch volatiles.

Section 55(3.2) allows the Board to consider the payment of compensation benefits for any worker disabled by bladder cancer who was exposed to sufficient doses of coal tar pitch volatiles while employed in the aluminum smelting industry if:

- the exposure did not end before January 1, 1974, and
- the Board received the application not later than March 13, 1992.

Section 55(3.3) allows the Board to reconsider any claims for bladder cancer that meet the requirements of section 55(3.2) and to pay compensation for any periods previously denied because of the wording of the earlier section 55 in effect since July 1, 1974. Sections 55(3.2) and (3.3) went into effect on August 26, 1994. If a claim for bladder cancer is filed after March 13, 1992, then the requirements of section 55(2), (3), or (3.1) must be met before compensation can be paid.

#32.60 Preventive Measures and Exposures

Once the basic requirements of a claim for a compensable injury or occupational disease have been met, the Board can accept responsibility for reasonable preventive or curative measures which are a normal part of the treatment of the resulting condition. For example, if a nurse pricks his or her finger with a contaminated hypodermic needle, just used for injecting a patient suspected of having infectious hepatitis, the Board will pay for a gamma globulin injection. This would be so even if the actual needle prick itself did not require treatment.

In order for an exposure to a disease or contaminant to be compensable, the worker must either sustain a personal injury or suffer from an occupational disease. An exposure which does not result in a personal injury or occupational disease does not meet the requirements of the *Act* in terms of compensability. Section 1 provides that "occupational disease" includes "*disablement* resulting from exposure to contamination" (emphasis added). No matter how appropriate it may be for a worker to be provided with prophylactic health care, particularly following an exposure to an infectious agent, the Board does not have the statutory authority to pay for such health care where the worker has not sustained a personal injury or is suffering from an occupational disease, even if the exposure places the worker at risk for developing an occupational disease.

In the event of such an exposure, any medical or other expenses that the worker may incur to prevent the onset of an injury or disease must remain the responsibility of the worker or the employer. For example, the Board would not pay for a measles vaccine for a nurse who came in contact with a patient who had that disease. In those circumstances, the nurse has not sustained either a personal injury nor an occupational disease. In one case, a laboratory assistant accidentally spilled over a hand blood from a patient infected with hepatitis. The worker already had an infected hangnail on that hand. The Board could not accept responsibility for the subsequent treatment with gamma globulin as there was no evidence of the worker suffering an injury or occupational disease. The treatment was for the purpose of preventing the onset of a disease.

It may help to further illustrate these principles. The Board would not pay for preventive health care benefits with respect to the following exposures (unless an occupational disease results):

- an ambulance attendant who has the blood of a suspected Hepatitis B carrier splashed onto a hand which had pre-existing cuts from gardening at home;
- a pipefitter who unknowingly works in an area containing asbestos insulation.

The Board would pay for reasonable health care benefits with respect to the following occupational exposures:

- a lab technician who in the course of employment cuts a finger on the sharp edge of a broken specimen bottle;
- a teacher who contracts ringworm at the time of an outbreak of this disease in the classroom.

No compensation is payable to a worker who withdraws from work or changes employment as a result of the worker believing (no matter how well-founded that belief may be) that further exposure to the conditions at work would create a risk of causing an injury or disease which does not yet exist. This is so even if the belief is based on information which comes from the Board itself.

For injuries on or after June 30, 2002, temporary total or temporary partial disability benefits are payable for a compensable occupational disease until any temporary disability terminates, or until the worker's symptoms become stabilized **or until the worker reaches retirement age as determined by the Board.** Such benefits are not payable to a worker who remains off work or who changes employment to prevent a reoccurrence of an occupational disease that has resolved, or to prevent an aggravation, activation, or acceleration of an occupational disease which has stabilized or plateaued. However, vocational rehabilitation assistance may be provided to a worker in this situation (see policy item #86.30). Where the worker is left with a permanent impairment, the worker may be entitled to a permanent disability ~~pension~~ **award.**

NOTES

- (1) Decision No. 231, 3 *W.C.R.* 87
- (2) Decision No. 3, 1 *W.C.R.* 11
- (3) S.6(1)(a)
- (4) Decision No. 99, 2 *W.C.R.* 15
- (5) Decision No. 205, 3 *W.C.R.* 16
- (6) ~~ODSC Charter, 8 *W.C.R.* 135~~ **DELETED**
- (7) Decision No. 207, 3 *W.C.R.* 21
- (8) An agreement entered into pursuant to section 8.1 of the *Act* may supersede
- (9) S.6(10)
- (10) Decision No. 232, 3 *W.C.R.* 91
- (11) Decision No. 267, 3 *W.C.R.* 188
- (12) ~~See policy item #93.24~~ **DELETED**
- (13) See Chapter 6
- (14) See policy item #13.20 and policy items #22.33-34
- (15) Decision No. 348, 5 *W.C.R.* 127
- (16) ~~Decision No. 102, 2 *W.C.R.* 25~~ **DELETED**
- (17) *Government Employees Compensation Act*, S.8(1)(a)