

Additions in Bold; Deletions Strikethrough

#35.30 Termination Duration of Payments Temporary Disability Benefits

~~Section 30(1) provides that payments for temporary partial disability continue so long as the disability lasts. This means that the, benefits payable under this Section will be terminated when the worker's physical impairment resulting from the injury ceases to be temporary partial, i.e. it disappears entirely, becomes total or stabilizes. If the worker's impairment remains temporary, but is total, there will be entitlement to temporary total disability payments under Section 29(1) of the Act. If the impairment has stabilized, the worker will be entitled to be assessed for a permanent partial disability award. The principles to be followed in determining whether a condition has stabilized are set out in #34.54.~~

~~Benefits will be terminated under Section 30(1) where, notwithstanding the existence of a temporary partial physical impairment, the worker is suffering no loss of earnings as a result of the injury.~~

Section 31.1 of the Act provides that:

Despite section 23.1, the Board may not make a periodic payment to a worker under section 22(1), 23(1) or (3), 29(1) or 30(1) if the worker ceases to have the disability for which the periodic payment is to be made.

As a result, the Board will terminate temporary total or temporary partial wage loss benefits under section 29(1) or 30(1) once the worker's temporary disability ceases. A temporary disability ceases when it either resolves entirely or stabilizes as a permanent impairment, entitling the worker to be assessed for a permanent disability award under section 22 or 23 of the Act.

The nature of a temporary disability may also change, affecting a worker's entitlement under the Act. Benefits payable under section 29(1), will be terminated if the worker's medical condition has resolved to the point where he or she is no longer considered temporarily totally disabled and becomes temporarily partially disabled. In these situations, the worker may be entitled to compensation under section 30(1) of the Act.

Similarly, benefits payable under section 30(1) will be terminated if the worker's compensable medical condition ceases to be "temporary partial" and becomes "temporary total". The worker in such circumstances may be entitled to compensation under section 29(1) of the Act.

In all cases, benefits will be terminated under sections 29(1) and 30(1) where, notwithstanding the existence of a temporary total or temporary partial impairment, the worker is suffering no loss of earnings as a result of the work injury.

Finally, the duration of temporary benefits may be affected by the worker's age at the date of injury.

Section 23.1 of the *Act* provides that compensation under section 22(1), 23(1) or (3), 29(1) or 30(1) may be paid to a worker, only:

- (a) if the worker is less than 63 years of age on the date of the injury, until the later of the following:
 - (i) the date the worker reaches 65 years of age; or
 - (ii) if the Board is satisfied the worker would retire after reaching 65 years of age, the date the worker would retire, as determined by the Board.
- (b) if the worker is 63 years of age or older on the date of the injury, until the later of the following:
 - (i) two years after the date of the injury; or
 - (ii) if the Board is satisfied that the worker would retire after the date referred to in subparagraph (i), the date the worker would retire, as determined by the Board.

Section 23.1 of the *Act* recognizes age 65 as the standard retirement age for workers. Confirmation of age 65 as the standard retirement age may also be found in the contractual terms of some employer sponsored pension plans and collective agreements. As well, Statistics Canada information lends weight to the general view that, on average, workers retire at or before 65 years of age. (6)

Section 23.1 also permits the Board to continue to pay benefits where the Board is satisfied that the worker would retire after the age of 65 if the worker had not been injured.

The standard of proof under the *Act* is on a balance of probabilities as described in policy item #97.00, Evidence. However, as age 65 is considered to be the standard retirement age, the Board requires evidence that is verified by an independent source to confirm the worker's subjective statement regarding his or her intent to work past age 65. Evidence is also required so that a Board officer can establish the worker's new retirement date for the purposes of concluding wage loss benefits. If the worker's statement is not independently verifiable, the Board officer will make a determination based on the evidence available, including information provided by the worker.

Examples of the kinds of independent verifiable evidence that may support a worker's statement that he or she intended to work past age 65, and to establish the date of retirement, include the following:

- **names of the employer or employers the worker intended to work for after age 65, a description of the type of employment the worker was going to perform, and the expected duration of employment**
- **information from the identified employer or employers to confirm that he or she intended to employ the worker after the worker reached age 65 and that employment was available**
- **information provided from the worker's pre-injury employer, union or professional association to confirm the normal retirement age for workers in the same pre-injury occupation**
- **information from the pre-injury employer on whether the worker was covered under a pension plan provided by the employer, and the terms of that plan**
- **information from the pre-injury employer or union on whether there was a collective agreement in place setting out the normal retirement age**

This is not a conclusive list of the types of evidence that may be considered. A Board officer will consider any other relevant information in determining whether a worker would have worked past age 65 and at what date the worker would have retired.

Where the Board is satisfied that a worker would have continued to work past age 65 if the injury had not occurred, wage loss payments may continue past that age until the date a Board officer has established as the worker's retirement date. At the worker's age of retirement, as determined by a Board officer, wage loss payments will conclude even if the worker's temporary disability remains.