

**Additions in Bold; Deletions Strikethrough**

## **VOLUME II**

### **CHAPTER 17**

#### **CHARGING OF CLAIM COSTS**

##### **#113.00 INTRODUCTION**

The general practice followed by the Board is that the cost of any compensation paid out on a claim is charged to the class or subclass of employers of which the ~~claimant's~~ **worker's** employer is a member. These costs are not paid directly by the employer. Rather, the employer will, through the assessment rate, pay a proportion of the total costs incurred on all claims made by employees of all the employers in the subclass. The proportion paid is the proportion which the employer's payroll bears to the total payrolls of all employers in the subclass. This may be adjusted through a system of experience rated assessments.

In certain cases, the class or subclass consists of one major employer so that the employer does directly pay the costs of the claim. Examples are the Canadian National Railway, Air Canada, Canadian Pacific, and the Provincial Government. These are termed deposit classes.

There are certain provisions in the ~~Workers Compensation Act~~ which result in exceptions to the above rule. An individual employer or the class or subclass may be relieved of the costs of compensation incurred on a particular claim. Alternatively, an individual employer may be charged with costs additional to the employer's ordinary liability as a member of a class or subclass. None of these special relieving or charging provisions apply to claims by Federal Government employees.

The amount of costs attributed to an employer are disclosed to an employer in the cost statements which are sent regularly. These list the claims concerned and the amount of costs incurred on each.

##### **#113.10 Investigation Costs**

Costs may be incurred prior to making a decision on a claim in investigating the validity of the claim or in paying benefits pursuant to an interim adjudication. Where the decision is ultimately in the worker's favour, these costs are charged to the employer's class in the normal way. Where the decision is unfavourable to

the worker, these costs will not be charged to the employer's class, but will be spread across all classes. They are treated in effect as an administration cost.

The same rule also applies where:

1. A claim is accepted in error or benefits paid in error;
2. A decision is reversed by the Review Board, Appeal Division (including a referral of a Review Board finding under Section 96(4)) or Medical Review Panel;
3. There is a readjudication by a Board officer.

The employer's class is relieved where the original decision was favourable to the worker and benefits were paid pursuant to it. Conversely, the class will be charged with costs already incurred where the previous decision was unfavourable to the worker.

**For another situation where the class of employers is relieved of costs as investigation costs, see the policy on suffering an occupational disease at policy item #26.10**

## **#113.20 Occupational Diseases**

The long period of exposure required for the development of some occupational diseases raises special problems in connection with the charging of claim costs. The position is the same as for injuries when the exposure has been with one employer only, but there are commonly situations where the relevant exposure has occurred during employments with two or more employers. The general rules followed in these cases are as follows:

1. **Until September 27, 2002,** All wage-loss and health care benefits are charged to the class of the employer at the time the claim was submitted for the first 13 weeks. **Effective September 28, 2002,** all wage loss and health care benefits are charged to the class of the employer at the time the claim was submitted for the first 10 weeks.
2. **Until September 27, 2002,** An assessment of the claimant's worker's work exposure history is then made and an apportionment of the costs incurred beyond 13 weeks, including the amount of any pension permanent disability award reserve, is carried out. The class of the employer at the time the claim is submitted will be charged with the portion of costs incurred after the 13 weeks, which is attributable to the claimant's worker's employment with the employer, provided that that portion exceeds

20% of the total amount. The balance will not be charged to any particular class but will be spread across all classes of industry.

**Effective September 28, 2002, an assessment of the worker's work exposure history is then made and an apportionment of the costs incurred beyond 10 weeks, including the amount of any permanent disability award reserve, is carried out. The class of the employer at the time the claim is submitted will be charged with the portion of costs incurred after the 10 weeks, which is attributable to the worker's employment with the employer, provided that that portion exceeds 20% of the total amount. The balance will not be charged to any particular class but will be spread across all classes of industry.**

3. **Until September 27, 2002,** ~~W~~where any portion attributable to any employer at the time the claim is submitted is less than 20%, the costs incurred following 13 weeks are not charged to any employer's class, but will be spread across all classes of industry. To ensure procedural fairness in the event of a dispute or an appeal in such situations, decision letters and appeal information is sent to the employers' association that best represents the appropriate class and subclass of industry.

**Effective September 28, 2002, where any portion attributable to any employer at the time the claim is submitted is less than 20%, the costs incurred following 10 weeks are not charged to any employer's class, but will be spread across all classes of industry. To ensure procedural fairness in the event of a dispute or an appeal in such situations, decision letters and appeal information is sent to the employers' association that best represents the appropriate class and subclass of industry.**

4. The apportionment is made by comparing the number of years of exposure with the employer at the time the claim is submitted with the claimant's **worker's** total exposure. No account is taken of varying degrees of exposure which may have occurred at different times.

### *#113.21 Silicosis and Pneumoconiosis*

When, in the case of silicosis or pneumoconiosis claims, there is exposure to silica or other dust in more than one subclass of industry within the Province, costs are normally apportioned on the basis of employment records confirming the exposure. Occasionally, it is difficult to be precise about exact periods of exposure because absolute confirmation of employment is not always available

many years after the fact. This is because employers may no longer be in business or the worker is unable to provide a complete resume of employment. Under the circumstances, there may be a few cases where it is unfair to simply use employment records for the charging of costs, particularly if there is other substantive evidence available to support exposure to silica dust in a certain class or classes of industry. The Board has therefore decided to give the ~~Claims Adjudicator~~ **Board officer** responsible for handling silicosis **or pneumoconiosis** claims discretion in the apportionment of costs where it appears that the sole use of employment records will produce an inequitable result.

The guidelines set out below are followed:

1. Cost for silicosis ~~of~~ **or** pneumoconiosis claims will normally be apportioned on the basis of confirmed periods of employment in industries where there is exposure to silica or other dust.
2. Where confirmed employment records are unavailable, but there is other substantive evidence to support periods of exposure to silica or other dust, the ~~Claims Adjudicator~~ **Board officer** responsible for silicosis ~~and~~ **or** pneumoconiosis claims has discretion to apportion costs on the basis of the best evidence available.
3. Where a worker is entitled to compensation for silicosis or pneumoconiosis under the terms of ~~Section 6 of the~~ *Workers Compensation Act*, the costs will be charged to the appropriate class or classes of industry within the province of British Columbia as provided by the ~~Act~~ **Act**.

### #113.22 *Hearing-Loss Claims*

Section 7(7) of the *Workers Compensation Act* provides that "Where a worker suffers loss of hearing caused by exposure to causes of hearing loss in 2 or more classes or subclasses of industry in the Province, the board may apportion the cost of compensation among the funds provided by those classes or subclasses on the basis of the duration or severity of the exposure in each."

The procedure followed to implement this provision is set out below.

1. An assessment is made of the ~~claimant's~~ **worker's** work exposure history and an apportionment made as between the various employers concerned of the cost of compensation paid out. The apportionment is made by allocating to each period of employment a factor varying in accordance with the loudness of the noise experienced and multiplying this by the number of years exposed in each employment. The resulting figures for each employment are

totalled and the percentage attributable to each is calculated by reference to this total.

2. The costs of a claim are attributed to individual employers in accordance with their percentage where those percentages are 20% or greater. Where the percentages of any employers are less than 20%, the equivalent percentages of the costs of the claim are not attributed to any particular employer, but are still charged to the appropriate class of industry.
3. Where the total exposure in this province is 5% or less, the claim is disallowed. Where the total exposure in this province is 90% or greater, the Board accepts responsibility for the whole hearing loss.
4. Where there is only one employer, but (because of non-occupational or out-of-province exposure) responsibility is less than 20%, the full costs of the claim are nevertheless attributed to that employer. (1)

#### ~~#113.40 *Blind Workmen's Compensation Act*~~

~~The *Blind Workmen's Compensation Act* was repealed June 26, 1975. Its provisions, however, remain applicable to injuries to blind workers where the injuries occurred prior to June 26, 1975.~~

~~Under these provisions, the consolidated revenue fund of the Province pays for all but the first \$50 of the cost of an industrial injury to a blind worker.~~

#### **#114.00 PROVISIONS RELIEVING CLASS OF COSTS OF CLAIM**

##### **#114.10 Transfer of Costs from One Class to Another**

Section 10(8) provides as follows:

"The provisions of this Part are in lieu of any right of action that the employer of the injured or deceased worker is or may, in respect of the personal injury or death of the worker, be entitled to maintain against another employer within the scope of this Part, or an independent operator to whom this Part applies by direction under section 2(2)(a); but where the board considers that

- (a) a substantial amount of compensation has been awarded as a result of the injury or death of the worker; and

- (b) the injury or death was caused or substantially contributed to by a serious breach of duty of care of an employer or an independent operator to whom this Part applies by direction under section 2(2)(a) in another class or subclass,

the board may order that the compensation be charged, in whole or in part, to the other class or subclass; but the provisions of this subsection do not affect any right which an employer may have against another employer, or an independent operator to whom this Part applies by direction under section 2(2)(a), arising out of their indemnity agreement or contract. "

This provision permits the Board to transfer the costs of a claim from the class of the claimant's **worker's** employer to the class of another employer in certain circumstances. The requirements of such a transfer are discussed below.

### *#114.12 Serious Breach of Duty of Care of Another Employer Must Have Caused or Substantially Contributed to Injury*

"Duty of care" has the same meaning as it does in the law of tort. It is therefore relevant to consider what conclusions a court of common law would come to if a claim for damages for personal injury were brought by the claimant **worker** against the other employer. The basic question considered is whether there was a failure to take reasonable care. The mere fact that the employer may have violated the Occupational Safety and Health Regulations is not sufficient since they often impose strict liability.

The doctrine of vicarious liability has no application to ~~S~~section 10(8), and a transfer of costs is only available where the breach of duty of care consisted of acts or omissions by management personnel who can be identified as the employer, and not to cases where the breach of duty consists only of the act or omissions of other workers.

If there has been a breach of duty of care by the employer, the next question to be considered is whether it was a "serious" one. The word "serious" refers to the culpability of the employer's behaviour rather than the consequences of that behaviour. Regard will be had to the probability of injury resulting from the breach and the predictable gravity of the likely consequences of such an injury.

The fact that the claimant **worker** was negligent does not necessarily mean that the employer's breach of duty did not cause or substantially contribute to the injury. Lapses of attention are a normal part of ordinary human behaviour that should be foreseen and guarded against.

### #114.13 *Discretion of the Board*

The Board has a discretion where the requirements set out in **policy items #114.10 – 12** are satisfied to transfer all or part of the cost of a claim. In exercising this discretion, the Board takes no account of any contributory negligence by the ~~claimant~~ **worker**.

### #114.30 **Disasters or Other Circumstances which Unfairly Burden a Class**

Section 39(1)(d) requires the Board to provide a reserve to meet the loss arising from a disaster or other circumstances which the Board considers would unfairly burden the employers in a class.

Costs will not be charged to the fund created by ~~S~~section 39(1)(d) because there is an unfair burden on an individual employer. The unfair burden must be on a class or subclass of employers.

Each deposit account employer forms a class by itself. This does not automatically mean that a burden on the individual is a burden on the class. The relief available to deposit accounts under ~~S~~section 39(1)(d) is limited to the same sorts of situations as for other employers.

### #114.40A **Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability**

**This policy is effective until September 27, 2002.**

Section 39(1)(e) requires the Board to “provide and maintain a reserve for payment of that portion of the disability enhanced by reason of a pre-existing disease, condition or disability.”

The section is applied most frequently in cases where a ~~pension~~ **permanent disability** award has been made. There are, however, claims where temporary total or temporary partial disability can be said to have been protracted by reason of a pre-existing disease, condition or disability. In such cases, no consideration will be given to the application of ~~S~~section 39(1)(e) until the ~~claimant~~ **worker** has been temporarily disabled for a minimum period of 13 weeks following the injury. All of the costs of a claim cannot be charged under ~~S~~section 39(1)(e).

Since the section specifically refers to the enhancement of “disability”, it has no application in fatal cases or in cases where only health care benefits are payable.

Two questions are considered when evaluating the application of ~~S~~section 39(1)(e):

1. Was there a pre-existing disease, condition or disability and, if so, to what extent?
2. How severe was the incident initiating the claim in question?

Obviously, if a worker suffers an injury and there is no evidence of any pre-existing disease, condition or disability, the subsection is inapplicable. Similarly, where there is confirmation of a pre-existing disease, condition or disability of a minor degree, but the incident which precipitated the instant claim was of a severe nature, the section may be considered but will normally not be applicable. However, the section will clearly be applicable to those situations where a worker suffered a relatively minor injury at the time the instant claim was initiated, but there is evidence that the recovery period was prolonged, or a permanent disability was enhanced, by reason of a pre-existing disease, condition or disability. The fact that a disability has been prolonged or enhanced by other factors than a pre-existing condition is not a ground for relief under ~~S~~section 39(1)(e).

How much disability stems from the injury and how much from the enhancement of the disease, condition or disability and, therefore, to what extent costs should be charged under ~~S~~section 39(1)(e) can never be more than an estimate and will always be difficult to determine. In cases of continuing wage-loss and health care benefits, it will be appropriate for the ~~Claims Adjudicator~~ **Board officer** to determine that all of the costs of these benefits after a particular point in time should be charged under ~~S~~section 39(1)(e). In some instances, it may be appropriate for the ~~Claims Adjudicator~~ **Board officer** to charge such costs on a percentage, rather than a time basis. In respect of permanent partial or permanent total disabilities, it will be necessary for the **Board officer in Disability Awards Officer or Adjudicator in Disability Awards**, using her or his own best judgment and having reference to the advice of the Disability Awards Medical Advisor, to establish a percentage applicable to the pre-existing condition and to charge the relevant costs accordingly.

### **#114.40B Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability**

**This policy is effective September 28, 2002.**

Section 39(1)(e) requires the Board to “provide and maintain a reserve for payment of that portion of the disability enhanced by reason of a pre-existing disease, condition or disability.”

The section is applied most frequently in cases where a ~~pension~~ **permanent disability** award has been made. There are, however, claims where temporary total or temporary partial disability can be said to have been protracted by reason of a pre-existing disease, condition or disability. In such cases, no consideration will be given to the application of ~~S~~section 39(1)(e) until the ~~claimant~~ **worker** has been temporarily disabled for a minimum period of ~~13~~ **10** weeks following the injury. All of the costs of a claim cannot be charged under ~~S~~section 39(1)(e).

Since the section specifically refers to the enhancement of “disability”, it has no application in fatal cases or in cases where only health care benefits are payable.

Two questions are considered when evaluating the application of ~~S~~section 39(1)(e):

1. Was there a pre-existing disease, condition or disability and, if so, to what extent?
2. How severe was the incident initiating the claim in question?

Obviously, if a worker suffers an injury and there is no evidence of any pre-existing disease, condition or disability, the subsection is inapplicable. Similarly, where there is confirmation of a pre-existing disease, condition or disability of a minor degree, but the incident which precipitated the instant claim was of a severe nature, the section may be considered but will normally not be applicable. However, the section will clearly be applicable to those situations where a worker suffered a relatively minor injury at the time the instant claim was initiated, but there is evidence that the recovery period was prolonged, or a permanent disability was enhanced, by reason of a pre-existing disease, condition or disability. The fact that a disability has been prolonged or enhanced by other factors than a pre-existing condition is not a ground for relief under ~~S~~section 39(1)(e).

How much disability stems from the injury and how much from the enhancement of the disease, condition or disability and, therefore, to what extent costs should be charged under ~~S~~section 39(1)(e) can never be more than an estimate and will always be difficult to determine. In cases of continuing wage-loss and health care benefits, it will be appropriate for the ~~Claims Adjudicator~~ **Board officer** to determine that all of the costs of these benefits after a particular point in time should be charged under ~~S~~section 39(1)(e). In some instances, it may be appropriate for the ~~Claims Adjudicator~~ **Board officer** to charge such costs on a percentage, rather than a time basis. In respect of permanent partial or permanent total disabilities, it will be necessary for the **Board officer in Disability Awards** ~~Officer or Adjudicator in Disability Awards~~, using her or his own best judgment and having reference to the advice of the Disability Awards Medical Advisor, to establish a percentage applicable to the pre-existing condition and to charge the relevant costs accordingly.

#### #114.41 *Relationship Between Sections 5(5) and 39(1)(e)*

It is important to distinguish between the provisions of ~~§~~section 5(5) discussed in **policy item #44.00** and ~~§~~section 39(1)(e). Section 5(5) deals with the situation where a disability resulting from a work injury is superimposed on a pre-existing disability in the same part of the body and increases that disability. (As outlined in **policy item #44.31**, ~~§~~section 5(5) can also apply if a ~~pension~~ **permanent disability award** is being assessed on a loss of earnings basis under ~~§~~section 23(3) of the ~~Workers Compensation Act~~ and the disability is deemed to be partly the result of a disability in another part of the body.) It may result in a reduction in the amount of compensation paid to the ~~claimant~~ **worker**. Section 39(1)(e) is concerned only with the class to which the costs of the claim are to be charged and cannot affect the entitlement of the ~~claimant~~ **worker**. It can apply in cases where ~~§~~section 5(5) does not apply and the whole of the ~~claimant's~~ **worker's** disability results from the injury or, if ~~§~~section 5(5) does apply, to the portion of disability for which the Board is responsible. It provides relief for the class of the ~~claimant's~~ **worker's** employer when the disability or portion of disability accepted under the claim is worse because of a pre-existing disease, condition or disability than it otherwise would be. That condition might well be in a different part of the ~~claimant's~~ **worker's** body.

#### #114.43 *Procedure Governing Applications under Section 39(1)(e)*

~~The Claims Adjudicator, Disability Awards Officer or Adjudicator in Disability Awards~~ **Board officer in either the Compensation Services or the Disability Awards Departments** has the responsibility to initiate consideration with or without a specific request or application by an employer, and to decide upon the applicability of the subsection on a claim. If a decision is made to apply this subsection, the employer will be notified. If relief has been requested, the employer will be advised if it has been denied. If there is a disagreement with such a decision, the employer may appeal to the Appeal Division.

#### #115.10 **Failure to Register as an Employer at the Time of Injury**

Where an employer is an employer to which the Act **Act** extends compulsory coverage, failure to register with the Board as an employer will not prejudice any claim by the employees unless the provisions set out in Workers' Compensation Reporter 335 and 20:30:30 of the **Assessment Policy Manual** apply. However, the employer may be faced with paying the costs of the claim under ~~§~~section 47(2) which provides as follows:

“An employer who refuses or neglects to make or transmit a payroll return or other statement required to be furnished by the employer under section 38(1), or who refuses or neglects to pay an assessment, or the

provisional amount of an assessment, or an instalment or part of it, must, in addition to any penalty or other liability to which the employer may be subject, pay the board the full amount or capitalized value, as determined by the board, of the compensation payable in respect of any injury or occupational disease to a worker in the employer's employ which happens during the period of that default, and the payment of the amount may be enforced in the same manner as the payment of an assessment may be enforced.”

Section 38(1) provides that “Every employer must

- (a) keep at all times at some place in the Province, the location of which the employer has given notice to the board, complete and accurate particulars of the employer's payrolls;
- (b) cause to be furnished to the board
  - (i) when the employer becomes an employer within the scope of this Part; and,
  - (ii) at other times as required by a regulation of the board of general application or an order of the board limited to a specific employer, an estimate of the probable amount of the payroll of each of the employer's industries within the scope of this Part, together with any further information required by the board; and
- (c) furnish certified copies of reports of the employer's payrolls, at or after the close of each calendar year and at the other times and in the manner required by the board.”

The Board may, under ~~S~~section 47(3), if satisfied that the default was excusable, relieve an employer in whole or in part from liability under ~~S~~section 47(2).

The Board has decided that ~~S~~section 47(2) applies to claims for fatalities.

The charge made under ~~S~~section 47(2) is in addition to any ordinary assessments which the employer may be liable to pay for the period prior to the occurrence of the injury.

**Policy Item #113.30** dealt with the rules followed in charging the costs of claims where an employer is carrying on business in two or more provinces and is required to register in both. Where such an employer is not registered in this province at the time of an injury, there may be personal liability for the costs of the claim under ~~S~~section 47(2) in any situation where, under the provisions of the Interjurisdictional Agreement or otherwise, the employer's class would ordinarily be charged.

### *#115.11 Procedure for Applying Section 47(2)*

Following the acceptance of a claim, the ~~Claims Adjudicator~~ **Board officer** will write to the employer and advise of the potential for liability under ~~S~~section 47(2). The employer will be invited to make comments as to why he or she should not be charged with the costs of the claim. A decision on the employer's liability, and whether or not to provide relief from any liability, will then be made by a committee comprised of the Board's General Counsel or delegate and the Director or Manager, Assessment Policy, of the Assessment Department. An appeal lies to the Appeal Division under ~~S~~section 96(6.1) of the ~~Act~~**Act** as designated by the Governors.

Neither the committee nor the Appeal Division, when reviewing a claim for the purpose of ~~S~~section 47(2), will consider arguments made by the employer which question the validity of the ~~Claims Adjudicator's~~ **Board officer's** decision to accept the claim. If the employer wishes to challenge that decision, he or she must exercise the right of appeal with respect to the acceptance of the claim to the review board or Medical Review Panel.

### **#115.20 Significance of Employers Conduct in Producing Injury**

Generally speaking, whether or not an employer was at fault is not a material factor when determining how the costs of a claim are to be charged. The rules set out in **policy item #113.00** apply both when the employer's negligence or misconduct caused an injury and when the injury was due to circumstances beyond the employer's control. However, an exception is provided by ~~S~~section 73(2), which states as follows:

"Where an injury, death or disablement from occupational disease in respect of which compensation is payable occurs to a worker, and the board considers that this was due substantially to the gross negligence of an employer or to the failure of an employer to adopt reasonable means for the prevention of injuries or occupational diseases or to comply with the orders or directions of the board, or with the regulations made under this Part, the board may levy and collect from that employer as a contribution to the accident fund the amount of the compensation payable in respect of the injury, death or occupational disease, not exceeding in any case \$11,160.08, and the payment of that sum may be enforced in the same manner as the payment of an assessment may be enforced."

The Board has a discretion whether to charge an employer with the costs of a claim under this provision, but once it has decided to exercise that discretion, it has no choice but to charge the whole of the costs of the claim up to the maximum amount. It has no authority to charge a lesser amount or to relieve the employer in part.

The maximum amount is subject to Consumer Price Index adjustments, the figure set out above being applicable in the period January 1 to June 30, 1975. The amounts applicable in other periods are set out below:

July 1, 1995	– December 31, 1995	\$36,188.70
January 1, 1996	– June 30, 1996	36,297.21
July 1, 1996	– December 31, 1996	36,704.13
January 1, 1997	– June 30, 1997	36,948.28

If required, earlier figures may be obtained by contacting the Board.

The maximum in force at the date of the accident is the one that applies in any case.

As an alternative to the charge under ~~S~~section 73(2), penalty assessment may be levied under ~~S~~sections 70 and 73(1). These are general provisions allowing the Board to penalize employers for infractions of Occupational Safety and Health or First Aid Regulations or for other unsafe practices which apply whether or not an injury has occurred. Levies made under any of these sections are additional to the employer's ordinary liability to pay assessments and are credited to the Board's general funds rather than to the employer's class or subclass.

The Vice-President and departmental directors in the Board's Occupational Safety and Health Division have authority to levy charges or penalties under the provisions discussed above. Before making a decision, the person in question will notify the employer of the proposed penalty and the grounds for it and provide a chance to respond. If it is decided to make the levy, the employer may appeal to the Appeal Division. The notice of appeal must be in writing and meet the grounds of appeal set out by ~~S~~section 96(6) of the ~~Act~~**Act**. The appeal does not operate as a stay of the decision appealed against. (5)

## **#115.30 Experience Rating**

Section 42 provides as follows.

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

The Board has adopted an experience rating plan (ER) under this section. The plan compares the ratio between an employer's claim costs and assessable payroll with the ratio between the total claim costs and assessable payroll of the employer's class. Subject to maximums, merits are assigned for favourable ratios and demerits for unfavourable ratios. The merit or demerit takes the form of a percentage increase or decrease in the usual assessment rate. Details of ER can be found in the ~~Assessment Policy Manual~~ **Assessment Policy Manual** (Policy No. 30:50:41).

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

1. Costs recovered by way of a third party action (see **policy item #111.25**).
2. Investigation and/or compensation costs paid out prior to the disallow of a claim or reversal of a decision by a Board officer or the Review Board, Appeal Division or Medical Review Panel (see **policy item #113.10**).
3. Costs transferred to the class of another employer under ~~S~~section 10(8) (see **policy item #114.10**).
4. Costs assigned to the funds created by ~~S~~section 39(1)(d) and (e) (see **policy item #114.30** and **policy item #114.40**).
5. Occupational disease claims which on average require exposure for, or involve latency periods of, two or more years before manifesting into a disability. The diseases presently excluded on this ground are:

Non-traumatic hearing loss, excluding hearing loss resulting from other injuries

Silicosis

Asbestosis

Other diagnosed pneumoconioses, for example, anthracosis and siderosis

Pneumoconioses not specifically diagnosed

Heart disease

Cancer

Hand-arm vibration syndrome, vinyl chloride induced Raynaud's phenomenon, disablement from vibrations

6. **Until September 27, 2002, C**costs after 13 weeks where **S**section 5(3) applies (see **policy item #16.60**). **Effective September 28, 2002, costs after 10 weeks where section 5(3) applies (see policy item #16.60).**
7. Costs from accidents substantially due to personal illness, e.g. epilepsy (see **policy item #15.30**).
8. Injuries during a retraining program sponsored by the Vocational Rehabilitation Department (see **policy item #88.43, policy item #88.54**).
9. The situations covered by **policy item #115.31** and **policy item #115.32** below.

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

### **#115.31** *Injuries or Aggravations Occurring in the Course of Treatment or Rehabilitation*

Where there is an aggravation of an injury or a subsequent injury arising out of treatment for the primary injury, and the aggravation or subsequent injury is acceptable on the claim, compensation costs resulting from this secondary problem will be charged in the usual way. Exclusion from the employer's experience rating will only occur where:

1. the original injury was one that would not have been expected to result in death or permanent disability, and
2. the aggravation or subsequent injury occurred beyond the operations of the employer, and if the worker required transportation to a hospital or other place of medical treatment, after the employer had fulfilled the obligations under **S**section 21(3) (see **policy item #82.40**), and
3. the aggravation or subsequent injury resulted in permanent disability or death.

The application of relief is limited to the ~~pension~~ **permanent disability award** reserve established for a fatality or permanent disability.

Consideration is automatically given by the Board officer to excluding the costs from experience rating in these cases. No request from the employer is required. The employer will be advised of the decision in writing. The decision is not appealable to the Review Board, but may be appealed to the Appeal Division.

### **#115.32**    *Claims Involving a Permanent Disability Award and a Fatality*

ER does not include the actual cost of the fatal claims experienced by an employer. Rather, it includes for each claim the average cost for all fatal claims in the year.

A worker in receipt of a permanent disability ~~pension~~ **award** may die as a result of the injury or disease accepted under the claim. If pensions are payable to dependants, the cost otherwise included in ER may be reduced to the extent set out below:

1. Where the average cost of a fatal award is the same or less than that of the permanent disability award, the total cost of the fatal award is excluded.
2. Where the average cost of a fatal award is greater than that of the permanent disability award, a portion of the cost of the fatal award equal to the reserve charged to the employer for the permanent disability award is excluded.

## NOTES

- (1) See **policy item #31.20**
- (2) See 20:30:40 Assessment Policy Manual
- (3) See **policy item #112.30**
- (4) See **policy item #82.40**
- (5) See **policy item #82.40**
- (6) S.96(6) and 96(7)