

2002/11/19-04

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

RESOLUTION OF THE PANEL OF ADMINISTRATORS

Re: Chronic Pain

WHEREAS:

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), the Panel of Administrators ("Panel") must approve and superintend the policies and direction of the Workers' Compensation Board ("Board"), including policies respecting compensation, assessment, rehabilitation and occupational safety and health, and must review and approve the operating policies of the Board;

AND WHEREAS:

As a result of legislative changes to the *Act* relating to permanent partial disability awards and the Government's Core Review of workers' compensation legislation and policies, the Board has undertaken a review of chronic pain policies;

AND WHEREAS:

Board policy does not reflect the current scientific and clinical information regarding chronic pain;

AND WHEREAS:

Stakeholders have raised concerns regarding the lack of clarity with respect to the provision of section 23(1) awards for chronic pain;

THE PANEL OF ADMINISTRATORS RESOLVES THAT:

1. Policy items #22.33, #22.35, #39.01 and #97.40 in the *Rehabilitation Services & Claims Manual* ("RS&CM") Volume I are amended as shown in the attached Appendix "A" to this resolution.
2. Policy items #22.33, #22.35, #39.02 and #97.40 in the *RS&CM* Volume II are amended as shown in the attached Appendix "B" to this resolution.
3. This resolution applies to new claims received and all active claims that are currently awaiting an initial adjudication.
4. This resolution is effective on January 1, 2003.

DATED at Richmond, British Columbia, November 19, 2002.

By the Workers' Compensation Board

**MAUREEN NICHOLLS, CHAIR
PANEL OF ADMINISTRATORS**

Additions in Bold; Deletions Strikethrough

APPENDIX “A”

REHABILITATION SERVICES & CLAIMS MANUAL
VOLUME I

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VOLUME I

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#22.33 Psychological Problems~~/Chronic Pain Problems~~

Psychological problems arising from a physical or psychological injury are acceptable as compensable consequences of the injury. However, there must be evidence that the claimant is psychologically disabled. It cannot be assumed that such a disability exists simply because the claimant has unexplained subjective complaints or is having difficulty in psychologically or emotionally adjusting to any physical limitations resulting from the injury.

When a claim is submitted for psychological problems resulting directly from the claimant's employment without the occurrence of any physical trauma, reference should be made to #13.20 and #32.10.

When a psychological impairment becomes permanent, it will be necessary to determine whether there is entitlement to a permanent disability pension. The decision-making procedure for assessing entitlement to a permanent disability award for psychological impairment is found in #38.10.

~~Chronic pain problems are also acceptable if the evidence indicates that they result from the work injury. Chronic pain is not assessed as a psychological impairment. If the evidence indicates that the condition is disabling but may be amenable to treatment, it will be regarded as a temporary disability and wage loss paid in the normal way. The Board may refer a claimant with a chronic pain problem to a chronic pain management clinic, in which case wage loss is paid during the attendance. On discharge from the clinic, if the claimant still has continuing complaints the condition will not necessarily be considered to have stabilized immediately. Many claimants still require time to build up their endurance. It may therefore be reasonable to regard the condition as temporary and pay wage loss under Section 29 or 30 for a further period of time. (14)~~

EFFECTIVE DATE: January 1, 2003
APPLICATION: To decisions made on or after January 1, 2003.

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Additions In Bold; Deletions Strikethrough

NOTES

- (1) Appeal Division Decision No. 92-0743; #24.00
- (2) See #13.12
- (3) *Law of Workmen's Compensation*, A. Larson, 1972, Vol. I, para. 23.61
- (4) See #2.23
- (5) Larson, para. 25.00
- (6) See #19.31
- (7) See #19.31
- (8) See #21.10
- (9) See #78.11
- (10) See #44.00
- (11) See #88.54 and #115.30
- (12) Ewing, J. Modern attitude toward traumatic cancer. *Arch. Path.* 19:690-728, 1935
- (13) Pritchard et al. The Etiology of Osteosarcoma. *Clin. Orthoped. and Rel. Res.* 111:14-22, September 1975;
Coley, W.B. *Neoplasms of Bone*. Paul Haber Inc., 2nd ed., 1960;
Dahlin, David C. *Bone Tumours*. Charles C. Thomas, 3rd ed., 1978;
Monkman et al. Trauma and Oncogenesis. *Mayo Cl. Proc.* 49:157-163, March 1974
- (14) ~~See Chapter 5~~ **DELETED**
- (15) S.21(8)
- (16) *Government Employees Compensation Act*, S.4(2)
- (17) *Government Employees Compensation Act*, S.4(3)
- (18) Appeal Division Decision No. 92-0743
- (19) *Government Employees Compensation Act*, S.3(2)
- (20) *Government Employees Compensation Act*, S.5
- (21) *Government Employees Compensation Act*, S.6

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#22.35 *Pain and Chronic Pain*

A worker's pain symptoms may be accepted as compensable where medical evidence indicates that the pain results as a consequence of a work injury or occupational disease. This policy discusses the scope of coverage in cases where pain is accepted as compensable. Pain is not assessed as a psychological impairment.

1. Definitions:

Pain is an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage. It includes cognitive, affective, behavioural and physiological components.

The Board recognizes three main stages of pain:

- i. Acute pain is pain that coincides with a traumatic injury or disease and the early stages of recovery. In the vast majority of cases acute pain eventually resolves, either spontaneously or with some form of treatment.**
- ii. Subacute pain is pain that an injured worker continues to experience four to six weeks after a traumatic injury or disease.**
- iii. Chronic pain is pain that persists six months after an injury or occupational disease and beyond the usual recovery time for that injury or disease. Chronic pain is further distinguished as either specific or non-specific as set out in policy item #39.02, "Chronic Pain".**

Usual recovery times for injuries or diseases are based on medical protocols and procedures adopted by the Rehabilitation and Compensation Services Division. These medical protocols set out the points in time, after an injury, when a worker should regain pre-accident functional ability, or reach maximum medical recovery.

In determining the appropriate recovery time for an injury, the Board officer may, in consultation with a Board Medical Advisor, consider the medical protocols as well as other factors such as the worker's pre-injury health status and any treatments received that would likely impact the recovery time of the work injury.

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2. Early Intervention – Acute and Subacute Pain:

Early intervention involves the provision of early return to work assistance and/or focused multidisciplinary treatment and rehabilitation, to expedite the worker’s medical recovery and return to work. Early intervention at the acute or subacute stages of pain is essential as both rehabilitation and prevention measures in deterring the development of chronic pain. Studies indicate that even with some residual or recurrent pain symptoms, workers do not have to wait until they are completely pain free to return to work.

Early intervention should be incorporated into the worker’s rehabilitation plan. (See policy item #88.00, “Programs and Services”)

(a) Early Return to Work Assistance

In the majority of cases following an injury, a worker is able to return to work shortly after an injury without Board assistance. The provision of early return to work assistance for a worker experiencing acute or subacute pain that is affecting the worker’s return to work efforts will be considered as soon as the worker is medically able to participate. A Board officer will coordinate the worker’s early return to work plan in collaboration with the worker, the attending physician, a Board Medical Advisor, the employer and treating clinicians as needed.

In developing an early return to work plan, the Board officer may consider the worker’s entitlement to vocational rehabilitation programs and services such as graduated return to work assistance, placement assistance and work site/job modifications where the Board officer concludes that they will assist in a worker’s return to work. (See Chapter 11, “Vocational Rehabilitation Services”)

(b) Multidisciplinary Treatment and Rehabilitation

In certain cases, the Board officer may consider it appropriate to refer the worker for focused multidisciplinary treatment and/or rehabilitation intervention. These interventions are preferred in cases where the Board officer concludes that they will assist in the worker’s early return to work. The Board officer may also consider these interventions where they will assist in preventing the onset of chronic pain.

In making this determination, the Board officer may consult with a Board Medical Advisor and/or a Board Psychologist. The worker’s attending physician may also be consulted to confirm his or her agreement with the proposed intervention.

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A multidisciplinary approach may include one or more of the following: medical management, physical conditioning, work conditioning, pain and stress management, ergonomic consultation, and vocational counseling and placement.

In determining what specific treatment or rehabilitation intervention is appropriate for a worker, the Board officer may refer the worker for a multidisciplinary assessment. A multidisciplinary assessment is an evaluation of the worker by a physician, a psychologist, a physiotherapist, an occupational therapist, or other provider as the Board determines appropriate.

A multidisciplinary assessment may involve consideration of the worker's medical history, health status, physical limitations, psychological state, behaviour, and workplace issues. The evaluation will provide an opinion on the treatment or rehabilitation intervention, or combination of interventions that would be appropriate to aid in the worker's recovery and return to work.

(c) Early Intervention - Chronic Pain

In all cases where a Board officer considers that a worker may be experiencing chronic pain symptoms, a multidisciplinary assessment must be undertaken. This evaluation will provide an opinion on whether a worker is experiencing chronic pain as a consequence of a compensable injury. The evaluation will also provide an opinion on the appropriate course of treatment and rehabilitation for the worker.

3. Compensation:

Where a worker is participating in treatment and/or rehabilitation for temporarily disabling pain, a worker's entitlement to temporary wage loss benefits may be considered under section 29 or 30 of the *Act*.

Where chronic pain is considered by the Board officer to become permanent, entitlement to permanent partial disability benefits may be considered under section 23 of the *Act*.

EFFECTIVE DATE: January 1, 2003
APPLICATION: To decisions made on or after January 1, 2003.

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#39.01 ~~*Subjective Complaints*~~ **Chronic Pain**

This policy sets out guidelines for the assessment of section 23(1) awards for workers who experience disproportionate disabling chronic pain as a compensable consequence of a physical or psychological work injury.

1. Definitions:

Chronic pain is defined as pain that persists six months after an injury and beyond the usual recovery time of a comparable injury.

The Board distinguishes between two types of chronic pain symptoms:

Specific chronic pain - pain with clear medical causation or reason, such as pain that is associated with a permanent partial or total physical or psychological disability.

Non-specific chronic pain - pain that exists without clear medical causation or reason. Non-specific pain is pain that continues following the recovery of a work injury.

2. Multidisciplinary Assessment:

Where a worker has been referred for a permanent partial disability assessment under section 23(1) for chronic pain, the Board officer in Disability Awards may refer the worker for a multidisciplinary assessment. (See policy item #22.35, "Pain and Chronic Pain")

A multidisciplinary assessment may involve consideration of the worker's medical history, health status, the impact of the pain on the worker's physical functioning, psychological state, behaviour, ability to perform the pre-injury occupation and ability to perform activities of daily living. [See policy item #22.35, "Pain and Chronic Pain", subsection 2(b)]

Based on the various assessments, the evaluation will provide the Board officer with information on whether the worker is experiencing persistent chronic pain as a result of a work injury or disease and the extent of the chronic pain. The evaluation will also provide information on the consistency of the worker's pain presentations.

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3. Evidence Considered in a Chronic Pain Section 23(1) Assessment:

In making a determination under section 23(1), the Disability Awards Officer or Adjudicator in Disability Awards will enquire carefully into all of the circumstances of a worker's condition **chronic pain** resulting from a compensable injury **or disease**. ~~This means that both the objective physical findings noted by the doctors who examined the worker and the subjective complaints of pain will be considered. The fact that the complaints are largely subjective does not automatically preclude a finding that a worker has a disability within the meaning of section 23(1). Nor, on the other hand, does the fact that subjective complaints exist automatically warrant a finding of disability. In all cases, a decision must be made on the particular facts of the claim as to whether or not a disability exists.~~

The evidence that a Board officer may consider in a section 23(1) assessment for chronic pain includes the following:

- i) The findings of any multidisciplinary assessments.**
- ii) Information provided by the worker's attending physician as well as any other relevant medical information on the claim.**
- iii) The worker's own statements regarding the nature and extent of the pain.**
- iv) The worker's conduct and activities and whether they are consistent with the pain complaints.**
- v) In cases of specific chronic pain, the Board officer will consider the extent of the associated physical or psychological permanent impairment and whether the specific chronic pain is in keeping with the particular permanent impairment.**

~~With regard to the question as to what type of evidence will be sufficient to justify a conclusion that a permanent disability exists in these cases, it is not possible to lay down an exclusive list. However, some suggestions can be made. There will, in the first place, be the worker's own evidence regarding the nature and extent of the complaints and whether that evidence is credible and consistent.~~

~~Regard must also be had to the worker's conduct and activities and whether they are consistent with the complaints. There will then be the evaluations of the worker by the various professional personnel and Board's staff who have been involved in the case, for example, doctors, psychologists, and rehabilitation consultants. Consideration will have to be given to the objective observations of these persons as well as their subjective assessments. They may be able to~~

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~~comment on whether the worker's complaints are of a type and extent that might reasonably result from the type of injury which was suffered.~~

~~When there is little clinical evidence of objective impairment, extreme caution must be exercised in concluding that there is a permanent disability resulting from that injury. The evidence that is relied upon to support the assessment of such an a **section 23(1)** award must be fully documented. It must clearly demonstrate that there is a permanent disability for which the payment of a permanent disability award may be supported.~~

~~Sometimes cases occur where, although the worker has subjective complaints of pain and discomfort, the actual impairment reported by the Disability Awards Medical Advisor or External Service Provider is negligible or too minimal to justify an award of the lowest percentage of disability ordinarily recognized. Where there is appropriate medical rationale to support the subjective complaints, the Disability Awards Officer or Adjudicator still has some discretion to make an award, having regard to the worker's particular circumstances, and may do so where, for instance, there is evidence that the stress of the worker's occupation or other physical activity could result in an impairment. The Disability Awards Officer or Adjudicator will not grant an award if she or he considers that the impairment is unlikely to affect the worker's earning capacity. There is, in that situation, felt to be no "impairment of earning capacity" within the meaning of section 23(1).~~

~~In making this determination, the Disability Awards Officer or Adjudicator may, in some cases, have to ask the Rehabilitation Consultant to investigate the occupations which are, in the long term, available and which the worker is able to do. This represents one exception to the general principle that, in assessing the degree of physical impairment, no regard is had to the actual loss of earnings suffered by the worker because of permanent impairment. On the other hand, if in such a case it is ultimately determined that the impairment, though minimal, will affect earning capacity, the assessment of the permanent partial disability award under section 23(1) is still on a percentage basis. A separate assessment of the pension will be made under the projected loss of earnings method which will result in a pension based on the actual loss of earnings. The higher of the two pensions will, according to normal principles, be the one awarded.~~

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4. Entitlement to a Section 23(1) Assessment:

Entitlement to a section 23(1) award for chronic pain may only be considered after all appropriate medical treatment and rehabilitation interventions have been concluded.

(a) Specific Chronic Pain – Consistent with the Impairment

Where a worker has specific chronic pain that is consistent with the associated compensable physical or psychological permanent impairment, the section 23(1) award will be considered to appropriately compensate the worker for the impact of the chronic pain. Pain is considered to be consistent with the associated compensable impairment where the pain is limited to the area of the impairment, or medical evidence indicates that the pain is an anticipated consequence of the physical or psychological impairment. In these cases, an additional award for the specific chronic pain will not be provided, as it would result in the worker being compensated twice for the impact of the pain.

(b) Specific and Non-Specific Chronic Pain – Disproportionate to the Impairment

A worker's entitlement to a section 23(1) award for chronic pain will be considered in the following cases:

- i) Where a worker experiences specific chronic pain that is disproportionate to the associated objective physical or psychological impairment.**

Pain is considered to be disproportionate where it is generalized rather than limited to the area of the impairment or the extent of the pain is greater than that expected from the impairment.

In these cases, a separate section 23(1) award for chronic pain may be considered in addition to the award for objective permanent impairment.

- ii) Where a worker experiences disproportionate non-specific chronic pain as a compensable consequence of a work injury or disease.**

Disproportionate pain, for the purposes of this policy, is pain that is significantly greater than what would be reasonably expected given the type and nature of injury or disease.

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Where a Board officer determines that a worker is entitled to a section 23(1) award for chronic pain in the above noted situations, an award equal to 2.5% of total disability will be granted to the worker.

EFFECTIVE DATE: January 1, 2003
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#97.40 Disability Awards

In cases of very minor disabilities, **Board officers in** Disability Awards ~~Officers or Adjudicators in Disability Awards~~ may proceed to calculate a disability award without a permanent functional impairment evaluation, if they consider that this is unnecessary having regard to the medical evidence already available. Except for those cases, the normal practice is for a permanent functional impairment evaluation to be conducted for disability awards purposes by a Disability Awards Medical Advisor or an External Service Provider.

It is the responsibility of the **Board officer in** Disability Awards ~~Officer or Adjudicator~~ to classify the disability as a percentage of total disability. In doing this, it is proper for the **Board officer** ~~Disability Awards Officer or Adjudicator~~ to consider other factual and medical evidence as well as the report of the Disability Awards Medical Advisor or the External Service Provider. However, although the report of the Disability Awards Medical Advisor or the External Service Provider is not the only medical input that a **Board officer** ~~Disability Awards Officer or Adjudicator~~ may use, it will usually be the primary input, and caution will be used in referring to any other medical opinion.

The report of a Disability Awards Medical Advisor or External Service Provider takes the form of expert evidence which, in the absence of other expert evidence to the contrary, should not be disregarded. This does not mean that a **Board officer** ~~Disability Awards Officer or Adjudicator~~ must adopt the percentage indicated by the Disability Awards Medical Advisor or External Service Provider. It is always open to the **Board officer** ~~Disability Awards Officer or Adjudicator~~ to conclude that, although the functional impairment of the worker is a certain percentage, the disability (i.e. the extent to which that impairment affects the worker's ability to earn a living) is greater or less than the percentage of impairment.

The decision-making procedure for assessing entitlement to a permanent disability award for psychological impairment under section 23(1) of the *Act* is discussed in policy item #38.10.

In making a determination under section 23(1), the Disability Awards Officer or Adjudicator will enquire carefully into all of the circumstances of a worker's condition resulting from a compensable injury. ~~This means that both the objective physical findings noted by the examining doctors and the worker's subjective complaints of pain will be considered. The fact that the complaints are largely subjective does not automatically preclude a finding that a worker has a disability within the meaning of section 23(1). Nor, on the other hand, does the~~

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~~fact that subjective complaints exist automatically warrant a finding of disability. In all cases, a decision must be made on the particular facts of the claim as to whether or not a disability exists.~~

~~With regard to the question as to what type of evidence will be sufficient to justify a conclusion that a permanent disability exists in these cases, it is not possible to lay down an exclusive list. However, some suggestions can be made. There will, in the first place, be the worker's own evidence regarding the nature and extent of her or his complaints and whether that evidence is credible and consistent. Regard must also be had to the worker's conduct and activities and whether they are consistent with the complaints. There will then be the evaluations of the worker by the various professional personnel and Board's staff who have been involved in the case, for example, doctors, psychologists, rehabilitation consultants, and assessors in the Board's Rehabilitation Centre. Consideration will have to be given to the objective observations of these persons as well as their subjective assessments. They may be able to comment on whether the worker's complaints are of a type and extent that might reasonably result from the type of injury which was suffered.~~

~~When there is little clinical evidence of objective impairment, extreme caution must be exercised in concluding that there is a permanent disability resulting from that injury. The evidence that is relied upon to support the assessment of such an award must be fully documented. It must clearly demonstrate that there is a permanent disability for which the payment of a permanent disability award may be supported.~~

EFFECTIVE DATE: January 1, 2003
APPLICATION: To decisions made on or after January 1, 2003.

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APPENDIX “B”

REHABILITATION SERVICES & CLAIMS MANUAL
VOLUME II

**REHABILITATION SERVICES & CLAIMS MANUAL
VOLUME II**

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#22.33 *Psychological Problems/Chronic Pain Problems*

Psychological problems arising from a physical or psychological injury are acceptable as compensable consequences of the injury. However, there must be evidence that the worker is psychologically disabled. It cannot be assumed that such a disability exists simply because the worker has unexplained subjective complaints or is having difficulty in psychologically or emotionally adjusting to any physical limitations resulting from the injury.

When a claim is submitted for psychological problems resulting directly from the worker's employment without the occurrence of any physical trauma, reference should be made to policy items #13.20, #13.30 and #32.10.

When a psychological impairment becomes permanent, it will be necessary to determine whether there is entitlement to a permanent disability pension. The decision-making procedure for assessing entitlement to a permanent disability award for psychological impairment is found in policy item ~~#389.4001~~.

~~Chronic pain problems are also acceptable if the evidence indicates that they result from the work injury. Chronic pain is not assessed as a psychological impairment. If the evidence indicates that the condition is disabling but may be amenable to treatment, it will be regarded as a temporary disability and wage loss paid in the normal way. The Board may refer a worker with a chronic pain problem to a chronic pain management clinic, in which case wage loss is paid during the attendance. On discharge from the clinic, if the worker still has continuing complaints the condition will not necessarily be considered to have stabilized immediately. Many workers still require time to build up their endurance. It may therefore be reasonable to regard the condition as temporary and pay wage loss under section 29 or 30 for a further period of time. (14)~~

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NOTES

- (1) Appeal Division Decision No. 92-0743; policy item #24.00
- (2) See policy item #13.12
- (3) *Law of Workmen's Compensation*, A. Larson, 1972, Vol. I, para. 23.61
- (4) See policy item #2.23
- (5) Larson, para. 25.00
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- (12) Ewing, J. Modern attitude toward traumatic cancer. *Arch. Path.* 19:690-728, 1935
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- (14) ~~See Chapter 5~~ **DELETED**
- (15) S.21(8)
- (16) *Government Employees Compensation Act*, S.4(2)
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- (21) *Government Employees Compensation Act*, S.6

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#22.35 *Pain and Chronic Pain*

A worker's pain symptoms may be accepted as compensable where medical evidence indicates that the pain results as a consequence of a work injury or occupational disease. This policy discusses the scope of coverage in cases where pain is accepted as compensable. Pain is not assessed as a psychological impairment.

1. Definitions:

Pain is an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage. It includes cognitive, affective, behavioural and physiological components.

The Board recognizes three main stages of pain:

- i. Acute pain is pain that coincides with a traumatic injury or disease and the early stages of recovery. In the vast majority of cases acute pain eventually resolves, either spontaneously or with some form of treatment.**
- ii. Subacute pain is pain that an injured worker continues to experience four to six weeks after a traumatic injury or disease.**
- iii. Chronic pain is pain that persists six months after an injury or occupational disease and beyond the usual recovery time for that injury or disease. Chronic pain is further distinguished as either specific or non-specific as set out in policy item #39.02, "Chronic Pain".**

Usual recovery times for injuries or diseases are based on medical protocols and procedures adopted by the Rehabilitation and Compensation Services Division. These medical protocols set out the points in time, after an injury, when a worker should regain pre-accident functional ability, or reach maximum medical recovery.

In determining the appropriate recovery time for an injury, the Board officer may, in consultation with a Board Medical Advisor, consider the medical protocols as well as other factors such as the worker's pre-injury health status and any treatments received that would likely impact the recovery time of the work injury.

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2. Early Intervention – Acute and Subacute Pain:

Early intervention involves the provision of early return to work assistance and/or focused multidisciplinary treatment and rehabilitation, to expedite the worker’s medical recovery and return to work. Early intervention at the acute or subacute stages of pain is essential as both rehabilitation and prevention measures in deterring the development of chronic pain. Studies indicate that even with some residual or recurrent pain symptoms, workers do not have to wait until they are completely pain free to return to work. Early intervention should be incorporated into the worker’s rehabilitation plan. (See policy C11-88.00, “Nature and Extent of Programs and Services”)

(a) Early Return to Work Assistance

In the majority of cases following an injury, a worker is able to return to work shortly after an injury without Board assistance. The provision of early return to work assistance for a worker experiencing acute or subacute pain that is affecting the worker’s return to work efforts will be considered as soon as the worker is medically able to participate. A Board officer will coordinate the worker’s early return to work plan in collaboration with the worker, the attending physician, a Board Medical Advisor, the employer and treating clinicians as needed.

In developing an early return to work plan, the Board officer may consider the worker’s entitlement to vocational rehabilitation programs and services such as graduated return to work assistance, placement assistance and work site/job modifications where the Board officer concludes that they will assist in a worker’s return to work. (See Chapter 11, “Vocational Rehabilitation”)

(b) Multidisciplinary Treatment and Rehabilitation

In certain cases, the Board officer may consider it appropriate to refer the worker for focused multidisciplinary treatment and/or rehabilitation intervention. These interventions are preferred in cases where the Board officer concludes that they will assist in the worker’s early return to work. The Board officer may also consider these interventions where they will assist in preventing the onset of chronic pain.

In making this determination, the Board officer may consult with a Board Medical Advisor and/or a Board Psychologist. The worker’s attending physician may also be consulted to confirm his or her agreement with the proposed intervention.

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A multidisciplinary approach may include one or more of the following: medical management, physical conditioning, work conditioning, pain and stress management, ergonomic consultation, and vocational counseling and placement.

In determining what specific treatment or rehabilitation intervention is appropriate for a worker, the Board officer may refer the worker for a multidisciplinary assessment. A multidisciplinary assessment is an evaluation of the worker by a physician, a psychologist, a physiotherapist, an occupational therapist, or other provider as the Board determines appropriate.

A multidisciplinary assessment may involve consideration of the worker's medical history, health status, physical limitations, psychological state, behaviour, and workplace issues. The evaluation will provide an opinion on the treatment or rehabilitation intervention, or combination of interventions that would be appropriate to aid in the worker's recovery and return to work.

(c) Early Intervention - Chronic Pain

In all cases where a Board officer considers that a worker may be experiencing chronic pain symptoms, a multidisciplinary assessment must be undertaken. This evaluation will provide an opinion on whether a worker is experiencing chronic pain as a consequence of a compensable injury. The evaluation will also provide an opinion on the appropriate course of treatment and rehabilitation for the worker.

3. Compensation:

Where a worker is participating in treatment and/or rehabilitation for temporarily disabling pain, a worker's entitlement to temporary wage loss benefits may be considered under section 29 or 30 of the *Act*.

Where chronic pain is considered by the Board officer to become permanent, entitlement to permanent partial disability benefits may be considered under section 23 of the *Act*.

EFFECTIVE DATE: January 1, 2003
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#39.02 ~~*Subjective Complaints*~~ ***Chronic Pain***

This policy sets out guidelines for the assessment of section 23(1) awards for workers who experience disproportionate disabling chronic pain as a compensable consequence of a physical or psychological work injury.

1. Definitions:

Chronic pain is defined as pain that persists six months after an injury and beyond the usual recovery time of a comparable injury.

The Board distinguishes between two types of chronic pain symptoms:

Specific chronic pain - pain with clear medical causation or reason, such as pain that is associated with a permanent partial or total physical or psychological disability.

Non-specific chronic pain - pain that exists without clear medical causation or reason. Non-specific pain is pain that continues following the recovery of a work injury.

2. Multidisciplinary Assessment:

Where a worker has been referred for a permanent partial disability assessment under section 23(1) for chronic pain, the Board officer in Disability Awards may refer the worker for a multidisciplinary assessment. (See policy item #22.35, "Pain and Chronic Pain")

A multidisciplinary assessment may involve consideration of the worker's medical history, health status, the impact of the pain on the worker's physical functioning, psychological state, behaviour, ability to perform the pre-injury occupation and ability to perform activities of daily living. [See policy item #22.35, "Pain and Chronic Pain", subsection 2(b)]

Based on the various assessments, the evaluation will provide the Board officer with information on whether the worker is experiencing persistent chronic pain as a result of a work injury or disease and the extent of the chronic pain. The evaluation will also provide information on the consistency of the worker's pain presentations.

3. Evidence Considered in a Chronic Pain Section 23(1) Assessment:

In making a determination under section 23(1), the Board officer in Disability Awards will enquire carefully into all of the circumstances of a worker's ~~condition~~

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chronic pain resulting from a compensable injury **or disease**. This means that both the objective physical findings noted by the doctors who examined the worker and the subjective complaints of pain will be considered. The fact that the complaints are largely subjective does not automatically preclude a finding that a worker has a disability within the meaning of section 23(1). Nor, on the other hand, does the fact that subjective complaints exist automatically warrant a finding of disability. In all cases, a decision must be made on the particular facts of the claim as to whether or not a disability exists.

The evidence that a Board officer may consider in a section 23(1) assessment for chronic pain includes the following:

- i) The findings of any multidisciplinary assessments.
- ii) Information provided by the worker's attending physician as well as any other relevant medical information on the claim.
- iii) The worker's own statements regarding the nature and extent of the pain.
- iv) The worker's conduct and activities and whether they are consistent with the pain complaints.
- v) In cases of specific chronic pain, the Board officer will consider the extent of the associated physical or psychological permanent impairment and whether the specific chronic pain is in keeping with the particular permanent impairment.

With regard to the question as to what type of evidence will be sufficient to justify a conclusion that a permanent disability exists in these cases, it is not possible to lay down an exclusive list. However, some suggestions can be made. There will, in the first place, be the worker's own evidence regarding the nature and extent of the complaints and whether that evidence is credible and consistent.

Regard must also be had to the worker's conduct and activities and whether they are consistent with the complaints. There will then be the evaluations of the worker by the various professional personnel and Board's staff who have been involved in the case, for example, doctors, psychologists, and rehabilitation consultants. Consideration will have to be given to the objective observations of these persons as well as their subjective assessments. They may be able to comment on whether the worker's complaints are of a type and extent that might reasonably result from the type of injury which was suffered.

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~~When there is little clinical evidence of objective impairment, extreme caution must be exercised in concluding that there is a permanent disability resulting from that injury. The evidence that is relied upon to support the assessment of such an a **section 23(1)** award must be fully documented. It must clearly demonstrate that there is a permanent disability for which the payment of a permanent disability award may be supported.~~

~~Sometimes cases occur where, although the worker has subjective complaints of pain and discomfort, the actual impairment reported by the Disability Awards Medical Advisor or External Service Provider is negligible or too minimal to justify an award of the lowest percentage of disability ordinarily recognized. Where there is appropriate medical rationale to support the subjective complaints, the Board officer in Disability Awards still has some discretion to make an award, having regard to the worker's particular circumstances, and may do so where, for instance, there is evidence that the stress of the worker's occupation or other physical activity could result in an impairment. The Board officer in Disability Awards will not grant an award if she or he considers that the impairment is unlikely to affect the worker's earning capacity. There is, in that situation, felt to be no "impairment of earning capacity" within the meaning of section 23(1).~~

~~In making this determination, the Board officer in Disability Awards may, in some cases, have to ask the Board officer in Vocational Rehabilitation Services to investigate the occupations which are, in the long term, available and which the worker is able to do. This represents one exception to the general principle that, in assessing the degree of physical impairment, no regard is had to the actual loss of earnings suffered by the worker because of permanent impairment. On the other hand, if in such a case it is ultimately determined that the impairment, though minimal, will affect earning capacity, the assessment of the permanent partial disability award under section 23(1) is still on a percentage basis.~~

4. Entitlement to a Section 23(1) Assessment:

Entitlement to a section 23(1) award for chronic pain may only be considered after all appropriate medical treatment and rehabilitation interventions have been concluded.

(a) Specific Chronic Pain – Consistent with the Impairment

Where a worker has specific chronic pain that is consistent with the associated compensable physical or psychological permanent impairment, the section 23(1) award will be considered to appropriately compensate the worker for the impact of the chronic pain. Pain is considered to be consistent with the associated compensable impairment where the pain is limited to the area of the impairment, or medical evidence indicates that the

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pain is an anticipated consequence of the physical or psychological impairment. In these cases, an additional award for the specific chronic pain will not be provided, as it would result in the worker being compensated twice for the impact of the pain.

(b) Specific and Non-Specific Chronic Pain – Disproportionate to the Impairment

A worker's entitlement to a section 23(1) award for chronic pain will be considered in the following cases:

- i) Where a worker experiences specific chronic pain that is disproportionate to the associated objective physical or psychological impairment.**

Pain is considered to be disproportionate where it is generalized rather than limited to the area of the impairment or the extent of the pain is greater than that expected from the impairment.

In these cases, a separate section 23(1) award for chronic pain may be considered in addition to the award for objective permanent impairment.

- ii) Where a worker experiences disproportionate non-specific chronic pain as a compensable consequence of a work injury or disease.**

Disproportionate pain, for the purposes of this policy, is pain that is significantly greater than what would be reasonably expected given the type and nature of injury or disease.

Where a Board officer determines that a worker is entitled to a section 23(1) award for chronic pain in the above noted situations, an award equal to 2.5% of total disability will be granted to the worker.

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APPLICATION: To decisions made on or after January 1, 2003.**

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#97.40 Disability Awards

In cases of very minor disabilities, **Board officers in** Disability Awards ~~Officers or Adjudicators in Disability Awards~~ may proceed to calculate a disability award without a permanent functional impairment evaluation, if they consider that this is unnecessary having regard to the medical evidence already available. Except for those cases, the normal practice is for a permanent functional impairment evaluation to be conducted for disability awards purposes by a Disability Awards Medical Advisor or an External Service Provider.

It is the responsibility of the **Board officer in** Disability Awards ~~Officer or Adjudicator~~ to classify the disability as a percentage of total disability. In doing this, it is proper for the **Board officer** ~~Disability Awards Officer or Adjudicator~~ to consider other factual and medical evidence as well as the report of the Disability Awards Medical Advisor or the External Service Provider. However, although the report of the Disability Awards Medical Advisor or the External Service Provider is not the only medical input that a **Board officer** ~~Disability Awards Officer or Adjudicator~~ may use, it will usually be the primary input, and caution will be used in referring to any other medical opinion.

The report of a Disability Awards Medical Advisor or External Service Provider takes the form of expert evidence which, in the absence of other expert evidence to the contrary, should not be disregarded. This does not mean that a **Board officer** ~~Disability Awards Officer or Adjudicator~~ must adopt the percentage indicated by the Disability Awards Medical Advisor or External Service Provider. It is always open to the **Board officer** ~~Disability Awards Officer or Adjudicator~~ to conclude that, although the functional impairment of the worker is a certain percentage, the disability (i.e. the extent to which that impairment affects the worker's ability to earn a living) is greater or less than the percentage of impairment.

The decision-making procedure for assessing entitlement to a permanent disability award for psychological impairment under section 23(1) of the *Act* is discussed in policy item ~~#389.4001~~ **#389.4001**.

In making a determination under section 23(1), the Disability Awards Officer or Adjudicator will enquire carefully into all of the circumstances of a worker's condition resulting from a compensable injury. ~~This means that both the objective physical findings noted by the examining doctors and the worker's subjective complaints of pain will be considered. The fact that the complaints are largely subjective does not automatically preclude a finding that a worker has a disability within the meaning of section 23(1). Nor, on the other hand, does the~~

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~~fact that subjective complaints exist automatically warrant a finding of disability. In all cases, a decision must be made on the particular facts of the claim as to whether or not a disability exists.~~

~~With regard to the question as to what type of evidence will be sufficient to justify a conclusion that a permanent disability exists in these cases, it is not possible to lay down an exclusive list. However, some suggestions can be made. There will, in the first place, be the worker's own evidence regarding the nature and extent of her or his complaints and whether that evidence is credible and consistent. Regard must also be had to the worker's conduct and activities and whether they are consistent with the complaints. There will then be the evaluations of the worker by the various professional personnel and Board's staff who have been involved in the case, for example, doctors, psychologists, rehabilitation consultants, and assessors in the Board's Rehabilitation Centre. Consideration will have to be given to the objective observations of these persons as well as their subjective assessments. They may be able to comment on whether the worker's complaints are of a type and extent that might reasonably result from the type of injury which was suffered.~~

~~When there is little clinical evidence of objective impairment, extreme caution must be exercised in concluding that there is a permanent disability resulting from that injury. The evidence that is relied upon to support the assessment of such an award must be fully documented. It must clearly demonstrate that there is a permanent disability for which the payment of a permanent disability award may be supported.~~

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