

COMPENSATION PRACTICE AND QUALITY DEPARTMENT

PRACTICE DIRECTIVE # C14-3

TOPIC: Reopenings
ISSUE DATE: March 31, 2005
(Amended June 26, 2006 and October 2, 2007)

Objective

This practice directive provides guidance to WorkSafeBC officers on WorkSafeBC's ability to reopen a matter previously decided and replaces Practice Directive #58, *Reopenings* and Practice Directive #38B, *Reopenings and Recurrences – Bill 63*.

Law & Policy

Section 96(2) of the *Workers Compensation Act* (the "Act") enables WorkSafeBC to reopen a matter previously decided if there has been a significant change in a worker's medical condition that WorkSafeBC previously decided was compensable, or if there has been a recurrence of a worker's compensable injury. If either of these two grounds is met, WorkSafeBC may make a new decision that varies the previous decision. Only matters previously decided may be reopened.

Rehabilitation Services & Claims Manual, Vol. II ("RSCM"), Policy item #C14-102.01, *Changing Previous Decisions – Reopenings*, provides guidance on determining whether the reopening grounds have been met, explains the difference between reopening a matter and reconsidering a decision, defines recurrence of injury, and explains review/appeal rights applicable to reopening decisions.

Adjudicative Guidelines

(A) Terminology

Because the term "reopening" has a specific legislative meaning, it should only be used in relation to a determination under section 96(2) of the *Act*. The term "reopening" should not be used to refer to business processes such as the administrative process of reinitiating the payment of compensation on the AWL system or reactivating a claim in E-File.

Section 96(2) contains two grounds by which a matter may be reopened:

- a significant change in a worker's compensable medical condition

- a recurrence of injury.

Many “recurrences of injury” will also involve a “significant change” and it is not necessary to fit a circumstance within the parameters of only one of the grounds in order to reopen a matter; it may fit within both.

An example of where the “significant change” criterion may be applied is as follows. A worker suffers a knee injury that eventually results in compensable osteoarthritis for which the worker is awarded a permanent disability award. Some time later, and with no intervening incident, a medical report confirms increasing stiffness, swelling and joint space narrowing of her knee. In this case it would be appropriate to apply the “significant change” criterion in order to reopen the decision that the worker is appropriately compensated by the permanent disability award. The WorkSafeBC officer determines whether the significant change is temporary or permanent and considers the worker’s entitlement to any additional benefits.

An example of where the “recurrence of injury” criterion may be applied is as follows. A worker has a compensable surgical repair of a damaged ligament. The surgery appears successful, the worker’s symptoms resolve and he or she returns to work. Some time later, and with no intervening incident, the surgical graft fails and the worker requires further medical intervention. In this case it would be appropriate to apply the “recurrence of injury” reopening criterion and determine the worker’s entitlement to temporary disability benefits.

(B) General Intent of Reopening Provisions

The reopening provisions provide an opportunity for WorkSafeBC officers to revisit previously decided matters in circumstances where a worker’s compensable condition has further deteriorated since those previous decisions were made. Section 96(2) allows WorkSafeBC officers to consider a worker’s entitlement to additional benefits in order to address changes in the degree of disability caused by the worker’s compensable condition.

Even though section 96(2) identifies two separate grounds for reopening, that distinction is not especially relevant to determining whether the evidence on claim supports reopening the matter in question. The section 96(2) grounds mirror examples contained in policy prior to the 2003 legislative amendments, which may explain why these two grounds are not entirely distinct. In determining a possible reopening, WorkSafeBC officers should consider whether there has been a change in the worker’s compensable medical condition that has significantly altered the degree of disability. Such changes in the degree of disability can be addressed through the “significant change” reopening criterion.

Prior to the 2003 legislative amendments the “recurrence of injury” language was used to distinguish reopening an existing claim from starting a new claim for a new injury. Although “reopening” now has a specific meaning in the *Act*, this concept of causation is still relevant. In determining whether the reopening

provisions are applicable, officers need to determine if the changes in the worker's degree of disability are directly related to the original compensable injury or whether they result from a new incident. The reopening provisions are only relevant in cases where the changes in degree of disability are related to the original compensable injury and where the matter in question has been previously decided.

(C) *Decisions Made in Relation to a Request for Further Compensation*

Depending on the circumstances, when a WorkSafeBC officer receives a request for further compensation, it may be necessary to make several decisions. The officer should consider whether the issue raised is properly characterized as a potential reopening. It actually could be a request to reconsider a decision or to make a decision on a new matter.

If the request is a potential reopening, the WorkSafeBC officer will decide whether the issue relates to compensation or rehabilitation since these are the only decisions that can be reopened. For example, decisions on the charging or relieving of claims costs cannot be reopened because they do not relate to compensation or rehabilitation matters. The officer will then consider whether one of the grounds for reopening has been met and, if it has, the worker's entitlement to any further benefits.

Whether or not the deterioration of a worker's compensable medical condition is significant enough to meet the legislative reopening test is an adjudicative issue. A Medical Advisor can give an opinion on whether the medical condition has changed and in what way it has changed, but deciding whether that change is "significant" is a decision to be made by the claim owner.

Although evidence of such a change would be ideal, the reopening criteria do not require a measurable variation in the essential nature or characteristics of the worker's compensable condition (i.e., a demonstrable change in pathology). Since WorkSafeBC officers are basically considering changes in the degree of disability for the worker's compensable condition, significant changes in a worker's physical restrictions and/or limitations can be sufficient to warrant reopening a matter previously decided. For example, wage loss benefits are terminated when a worker with a compensable soft tissue injury returns to work. After several days back at work the worker experiences significantly increased pain and on the advice of his doctor takes a few more days off work. The officer can choose to reopen the decision to terminate wage loss benefits based on the worker's report of significantly increased pain.

In cases where a WorkSafeBC officer denies a potential reopening, the officer should determine whether the worker's medical condition is a compensable consequence of the original injury or is a new injury, and communicate that decision to the worker.

Alternatively, if the request does not present a potential reopening but the evidence suggests that the worker has a new injury resulting from a new incident, the officer will decide whether a new claim should be established. WorkSafeBC officers have the ability to adjudicate new matters as they arise and making a decision on a new matter not previously decided does not constitute a reopening or a reconsideration.

(D) Effect of Reopening

Reopening a matter may result in the payment of additional benefits or an increase or reduction in the extent of benefits. There is no presumption that wage loss benefits will be paid when a matter is reopened.

A reopening does not result in retroactive entitlement or disentitlement for the period prior to the change in medical condition or recurrence of injury. A variation in compensation or rehabilitation benefits as a result of a reopening will be effective on the date of the significant change in the worker's medical condition or the date of recurrence.

For example, if a medical report dated February 1st indicates a significant change in the worker's compensable medical condition but the worker continues to work until February 9th, the WorkSafeBC officer would consider the worker's entitlement to further wage loss benefits effective February 10th, although health care benefits would be payable effective February 1st (the date of reopening).

(E) New Matters – Health Care and VR

RSCM Policy item #C14-101.01, *Changing Previous Decisions – General*, clarifies that the reopening and reconsideration provisions are not intended to restrict WorkSafeBC's ability to adjudicate new matters not previously decided. These include situations where the *Act* gives WorkSafeBC broad discretion to make entitlement decisions over the course of a claim, such as entitlement to health care or vocational rehabilitation ("VR") benefits.

Based on new information or a change in circumstances that occurred after a previous decision was made, WorkSafeBC officers may make a new decision regarding entitlement to further health care benefits or VR services. Similarly, officers may make a new decision to modify, replace or discontinue a VR plan. These decisions constitute an adjudication of new matters, not a reopening or reconsideration of previously decided matters.

Health care and VR decisions have prospective application and apply to a worker's future entitlement to benefits or services. In cases where it is requested that the WCB retroactively change a past decision, including prior decisions regarding health care benefits, the reconsideration provisions will apply.

(F) New Medical Evidence Indicates Misdiagnosis

New medical information may indicate that a worker's medical condition was originally misdiagnosed. The reopening grounds are not met in such a case because there has been no recurrence and/or no significant change in the worker's medical condition; there has only been a change in WorkSafeBC's knowledge regarding the condition.

The WorkSafeBC officer may adjudicate the acceptability of any additional medical conditions evidenced by new medical information and may consider further health care benefit entitlement. These are new matters not previously decided (see RSCM Policy item #C14-101.01, *Changing Previous Decisions – General*). If a WorkSafeBC officer wants to accept an additional medical condition that had previously been denied, the reconsideration provisions apply.

(G) Reopening “On Application”

Reopening decisions made on WorkSafeBC's own initiative are reviewable by the Review Division, whereas a reopening “on application” is appealable directly to WCAT (section 96.2(2)(g) of the Act).

Reopening “on application” has been interpreted narrowly by both the Review Division and WCAT and, as a result, most reopening decisions are reviewable by the Review Division. In order for a reopening to be considered “on application” the worker must refer specifically to section 96(2) or use language substantially similar to that section. A general request of the worker for benefits would not constitute a reopening “on application”.

WorkSafeBC officers should ensure the appropriate review/appeal paragraph is included in the reopening decision letter. In most cases the worker's right of appeal lies with the Review Division.

CROSS REFERENCES:	See also PD #C14-2, <i>Reconsiderations</i> , PD #C1-1 - <i>Effective Dates & Transition Rules</i> , PD #C14-1- <i>Bill 63 Effective Dates & Transition Rules for Reopenings, Reconsiderations, Reviews & Appeals</i>
HISTORY:	This Practice Directive was amended on June 26, 2006 to add section (B) and to include further guidance in section (C) with respect to deciding whether a change in a worker's medical condition is significant enough to meet the reopening criteria. It was further amended in October 2007 to add section (G).
APPLICATION:	This Practice Directive was developed to provide guidance on RSCM Policy items #C14-101.01 and #C14-102.01, which were amended effective January 1, 2005.