

APPENDIX 5

Changes to Policy Consequential to Implementing the Revised Workers Compensation Act – Policies from the RS&CM, Vol. II, Proposed for Deletion

~~#39.31 — Injury Prior to March 18, 1943~~

~~Notwithstanding any other provision of the Act, all periodic payments awarded as compensation for permanent partial disability to workers injured prior to March 18, 1943, who, on January 1, 1955, or after that are in receipt of those periodical payments are calculated or recalculated at a rate of sixty-six and two-thirds per cent of average earnings of not less than two thousand dollars nor more than two thousand five hundred dollars per annum. Compensation is not payable under this provision for any period prior to January 1, 1955. (8)~~

~~#46.10 — Reinstatement of Commuted Pensions under Section 26~~

~~Section 26(1) of the Act provides that “Where periodical payments for permanent disability were awarded by the Board prior to January 1, 1966, and where~~

- ~~(a) — the award was for a percentage of total disability of 12% or greater, and the whole of the periodical payments was commuted prior to that date;~~
- ~~(b) — a portion of the periodical payments equivalent to 12% of total disability or greater was commuted prior to that date; or~~
- ~~(c) — the award was for a percentage of total disability of 12% or greater and was of periodical payments for a fixed term, and where the worker to whom the award had been made is still suffering from the disability, the Board may, on the application of the worker, establish new periodic payments, which are to commence for the month in which the application is received at the Board.”~~

~~#46.11 — Computation of Twelve Per Cent Disability~~

~~In determining the percentage of total disability represented by a commutation of periodical payments, the monthly dollar amount of the commutation should be compared with the monthly dollar amount of the periodical payments before the commutation, and multiplied by the percentage of total disability represented by the periodical payments before the commutation.~~

~~If the worker has had more than one commutation in respect of the same or different disabilities, the total value of the commutations and the disabilities is taken into account. In this case, all the commutations required to make the 12% must have occurred prior to January 1, 1966.~~

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Consider the following example of a worker injured in 1936 who had two partial commutations, one in 1952 and one in 1955, who applied for reinstatement in September, 1974.

A.	True percentage of total disability awarded (as varied by age and wage factors)	61.20
B.	Monthly wage rate prior to injury	100.00
C.	Life value of pension per month	38.25
D.	Monthly amount of 1952 commutation	6.75
E.	1952 commutation as percentage of whole disability	
	$\frac{(D \times A)}{C} = \frac{6.75 \times 61.20}{38.25}$	10.80
F.	Remaining percentage of total disability (A - E)	50.40
G.	Balance of monthly pension (C-D)	31.50
H.	Recalculation of monthly pension following policy item #39.61	
	$\frac{31.50 \times 66\frac{2}{3} \times \frac{2,000.00}{62\frac{1}{2}}}{12 \times 100.00}$	56.00
I.	Monthly amount of 1955 commutation	2.00
J.	1955 commutation as percentage of whole disability	
	$\frac{(I \times F)}{H} = \frac{2.00 \times 50.40}{56.00}$	1.80
K.	Total percentage of disability commuted (E + J)	12.60

In past years, the Board varied the assessed percentage of disability according to the earnings and age of the worker. In calculating the percentage of disability commuted for the purposes of section 26, the disability as varied by these factors is used.

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~~#46.12 — Purpose of Section 26 Already Achieved~~

~~Section 26(5) provides that “This section does not apply where the purpose of the section has been achieved as a result of an application under section 24 or in some other way.”~~

~~Therefore, section 26 has no application to a situation where, in the events that have occurred, a worker has not lost the future benefit of any cost of living increases by reason of the commutation. As under section 26, however, such a worker receives future cost of living increases based on what the periodical payments would have been had they not been commuted.~~

~~To take an example, suppose a worker was receiving a pension for permanent total disability, and in 1964 arranged with the Board a partial commutation of that pension equivalent to \$10.00 a month. If the remaining pension was increased pursuant to subsequent increases in the statutory minimum, it would, in November 1974, be \$341.01 less \$10.00 per month, i.e. \$331.01. The increases in the minimum have exceeded the cost of living increases, and in the result, the worker has not lost any cost of living increases by reason of the commutation. As cost of living adjustments are now made, the worker will continue to receive the cost of living percentage applied to \$341.01 so that the pension will continue to be the same as it would have been without the commutation, less the commuted \$10.00 per month.~~

~~#46.13 — Term Pensions~~

~~Where the award was for a fixed term that has not expired or been commuted, section 26 applies upon the expiry of the term. (21) The worker must also wait for the expiry of the term if he or she has to combine an expired or commuted pension with the term pension to satisfy the 12% requirement.~~

~~Occasionally, a term pension may be converted into a life pension if the worker is found to have an increased entitlement because of a deterioration in the pensionable condition. Section 26 is applicable as soon as the conversion takes place.~~

~~#46.14 — Rate of New Periodic Payments~~

~~Section 26(3) provides that “In order to calculate the rate of new periodic payments to be established under this section, the Board must determine~~

- ~~(a) — the monthly payments that would have been payable on January 1, 1966 if the award had been of periodic payments for life and there had been no commutation, or, where the commutation was partial, the additional rate of~~

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~~monthly payments that would have been payable on that date if there had been no commutation; and~~

- ~~(b) — the additional amount of monthly payments that would have been payable for the month during which the application is received by way of increases on the amounts calculated under paragraph (a) if those amounts had continued to be due; namely, the total of all increases that would have been made from January 1, 1966 to and including the last day of the month preceding the date the application is received."~~

~~The rate of the new periodical payments is the amount calculated under clause(b). (22)~~

~~Consider the following examples:~~

- ~~1. — Worker injured in 1938. Term award which expired in 1952. Application under section 26 in February, 1976.~~

~~A. — True percentage of total disability awarded
(as varied by age and wage factors) ————— 18.58%~~

~~B. — Monthly wage rate prior to injury ————— \$80.00~~

~~C. — Life value of permanent disability award per month (23)~~

$$\frac{18.58}{100} (A) \times \frac{62-1/2}{100} \times 80.00 (B) \text{ ————— } \$9.29$$

~~D. — Monthly permanent disability award that would have been payable if there had been no term award under provision in policy item #39.61 (section 33(4))~~

$$9.29 (C) \times \frac{66-2/3}{62-1/2} \times \frac{2,000.00}{12 \times 80.00 (B)} \text{ ————— } \$20.64$$

~~E. — Provision in #39.62 inapplicable as would result in permanent disability award less than under policy item #39.61~~

~~F. — C.P.I. from January 1, 1966 to January 1, 1976, on \$20.64 (D)
76.3452% of \$20.64 ————— \$15.75~~

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- G. ~~New monthly periodical payments under
section 26 commencing February 1, 1966~~ ~~\$15.75~~
2. ~~Claimant injured in December, 1944. Commuted part of permanent partial
disability pension in 1950. Application under section 26 in November,
1974.~~
- A. ~~True percentage of total disability awarded
(as varied by age and wage factors)~~ ~~40.97%~~
- B. ~~Monthly wage rate prior to injury~~ ~~\$150.00~~
- C. ~~Life value of pension per month~~
~~$$\frac{40.97}{100} (A) \times \frac{66-2/3}{100} \times 150.00 (B)$$~~ ~~\$40.97~~
- D. ~~Monthly amount commuted~~ ~~\$14.95~~
- E. ~~Percentage of total disability commuted~~
~~$$\frac{14.95}{40.97} (D) \times 40.97 (A)$$~~ ~~14.95%~~
- F. ~~Provision in policy item #39.61 inapplicable as injury
occurred after March 18, 1943~~
- G. ~~Additional monthly pension that would have been payable had
there been no commutation
under provision in policy item #39.62~~
~~$$\frac{14.95}{400} (E) \times 130.00$$~~ ~~\$19.44~~
- H. ~~C.P.I. on additional monthly pension (G)
from January 1, 1966 to July 1, 1974~~
~~49.85% of \$19.44~~ ~~\$9.69~~
- I. ~~Additional monthly periodical payments under
section 26 commencing November 1, 1974
(to be added to existing pension)~~
~~\$9.69~~

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~~#46.15 — Cost of Living Adjustment After Reinstatement~~

~~Cost of living adjustments after the establishment of the new periodical payments are based on the sum of the amounts calculated under clauses (a) and (b) in policy item #46.14. (24) A formula for calculating these adjustments, which applies both in cases of total and partial commutation is set out below.~~

~~Where the commutation was partial, so that part of the original award is still subsisting, the residue of the original award may be blended with the reinstated award under section 26. Where the commutation was total, the formula applies to the reinstated award, and where the commutation was partial, it applies to the blend of the residue of the original award with the reinstated award.~~

~~The formula is:~~

~~1. — The amount of pension benefits being paid for the month preceding
the cost of living adjustment ————— \$~~

~~PLUS~~

~~2. — The monthly amount of pension that had been commuted — \$~~

~~————— Subtotal ————— \$~~

~~3. — The application of the indexing factor described
in policy item #51.00 to that subtotal ————— \$~~

~~————— Second Subtotal — \$~~

~~LESS~~

~~4. — The monthly amount of pension that had been commuted — \$~~

~~————— Total — \$~~

~~The resulting total is the monthly pension that will be applicable after the cost of living adjustment.~~

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RE: Compensation on the Death of a Worker	ITEM: C8-61.10
Interest Payment Arising from the Application	
of Section 19(2)	

BACKGROUND

1. ~~Explanatory Notes~~

~~This policy describes the interest payable to a person whose monthly payments are reinstated under section 19(2) of the Act.~~

2. ~~The Act~~

Section 19:

~~(1) In this subsection and subsections (2) and (2.1)~~

~~“former subsection” means the section 19(1) that came into force on April 17, 1985 or the section 19(4) repealed in 1994;~~

~~“interest” means interest calculated at a rate and in a manner set by the Board for the purposes of this section;~~

~~“monthly payments” mean monthly payments under this Act to a widow, widower, former common law wife or former common law husband of a deceased worker;~~

~~“person” does not include a widow or former common law wife of a deceased worker if the widow or former common law wife remarried or entered into a new common law relationship before April 17, 1985.~~

~~(2) A person whose monthly payments were discontinued by application of a former subsection is entitled to~~

~~(a) monthly payments beginning on the later of~~

~~(i) the expiry of the 2 year period for which payment was made under the former subsection, or~~

~~(ii) the repeal of the former subsection,~~

~~(b) the amount, if any by which, during the period from April 17, 1985 to the beginning of monthly payments under paragraph (a), the total amount of compensation described by section 17 that the person~~

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~~would have received if the former subsection had not been in force exceeds the sum paid to the person under the former subsection, and~~

~~(c) — interest on any amount payable under paragraph (b).~~

~~(2.1) — In calculating monthly payments for the purposes of subsection (2), adjustments are deemed to have been made under section 25, as it read immediately before being amended by the *Workers Compensation Amendment Act, 2002*, for the months the former subsection was in force.~~

POLICY

Interest Payment Arising from the Application of Section 19(2)

~~Where interest is payable as a result of the application of section 19(2), it is calculated at the rates and in the manner set out in policy item #50.00.~~

PRACTICE

~~For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.~~

EFFECTIVE DATE:	December 31, 2003
AUTHORITY:	Section 19 of the <i>Act</i> .
CROSS REFERENCES:	Interest (policy item #50.00) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces policy item #55.61 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	This Item applies to interest payable under section 19(2) of the <i>Act</i> on or after December 31, 2003.

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~~#100.13 — Medical Review Panels~~

~~On an appeal to a Medical Review Panel under section 58(3) or (4) or a referral to a Medical Review Panel by the Board under section 58(5), expenses will be paid regardless of the result, unless it is concluded that the worker was misleading the Board or the doctor who completed the certificate initiating the appeal. Travel warrants may be issued, and accommodation may be offered if required. Policy item #100.15 applies where the worker resides outside the province.~~

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RE: Changing Previous Decisions – Reviews	ITEM: C14-105.01
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BACKGROUND

1. Explanatory Notes

~~Sections 96.2 to 96.5 provide a right of review in respect of certain decisions made by Board officers.~~

2. The Act

~~Section 96:~~

- ~~(6) — Despite subsection (1), the Board may review a decision or order made by the Board under this Part or by an officer or employee of the Board under this Part but only as specifically provided in sections 96.2 to 96.5.~~

POLICY

~~There is no POLICY for this Item.~~

PRACTICE

~~For any relevant PRACTICE information, readers should consult the Review Division's Practices and Procedures available on the WCB website.~~

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	s. 96(6), <i>Workers Compensation Act</i>
CROSS REFERENCES:	Changing Previous Decisions – General (C14-101.01), Changing Previous Decisions – Reopenings (C14-102.01), Changing Previous Decisions – Reconsiderations (C14-103.01), Changing Previous Decisions – Fraud and Misrepresentation (C14-104.01)
HISTORY:	New Item consequential to the <i>Workers Compensation Amendment Act (No. 2)</i>, 2002
APPLICATION:	Applies to all decisions on and after March 3, 2003