

2024/02/06-01**WORKERS' COMPENSATION BOARD
(WorkSafeBC)****RESOLUTION OF THE BOARD OF DIRECTORS****RE: Section 151 – Time Limits for Filing a Mental Disorder Claim****WHEREAS:**

Pursuant to section 319 of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 (*Act*), the Board of Directors of WorkSafeBC must set and revise as necessary the policies of the Board of Directors, including policies respecting occupational health and safety, compensation, rehabilitation and assessment;

AND WHEREAS:

Section 151 of the *Act* provides an application for compensation must be made within one year after the date of the worker's injury, mental disorder, death or disablement from occupational disease, unless special circumstances exist;

AND WHEREAS:

Policy item #93.21, *Time Allowed for Submission of Application*, in the *Rehabilitation Services & Claims Manual*, Volume II (*RS&CM*) provides guidance on time limits for submitting an application for compensation for an injury or mental disorder;

AND WHEREAS:

The Policy Regulation and Research Department (PRRD) has developed amendments to policy item #93.21, *Time Allowed for Submission of Application*, to clarify the date of a worker's mental disorder for the purposes of time limits for applying for compensation;

AND WHEREAS:

The PRRD has also developed amendments to policy item #93.22, *Application Made out of Time*, in the *RS&CM* to update guidance on how special circumstances may be considered when an application is filed out of time, and to Item C4-26.00, *"Date of Injury" for Occupational Disease*, in the *RS&CM* to

ensure internal consistency in determining the date of occupational disease for time limit purposes;

AND WHEREAS:

The PRRD has undertaken stakeholder consultation on this issue and has advised the Board of Directors on the results of the consultation;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. The amendments to policy items #93.21, *Time Allowed for Submission of Application* and #93.22, *Application Made Out of Time*, and Item C4-26.00, *“Date of Injury” for Occupational Disease* of the *RS&CM* as set out in Appendix 1 attached to this resolution, are approved.
2. The amendments approved herein apply to all decisions, including appellate decisions, made on or after May 1, 2024.
4. This resolution is effective February 6, 2024.
5. This resolution constitutes a policy decision of the Board of Directors.

I, Baltej Dhillon, hereby certify for and on behalf of the Board of Directors of WorkSafeBC that the above resolutions were duly passed at a meeting of the Board of Directors hosted in British Columbia on February 6, 2024.

Original signed by Baltej Dhillon

BALTEJ DHILLON
Chair, Board of Directors
Workers' Compensation Board

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#93.21 *Time Allowed for Submission of Application*

A worker or worker's dependent must apply for compensation for an injury, mental disorder, death or disablement from occupational disease within the time limits set out in section 151 of the Act.

Section 151(2) provides: that“

If the Board is satisfied that compensation is payable, it may be paid without an application.

Section 151(3) provides:

Except as provided in this section and section 152, no compensation is payable unless an application for compensation is filed, or determination under subsection (2) of this section is made, within one year after the date of the worker's injury, mental disorder, death or disablement from occupational disease.

~~Section 151 is applied to claims for compensation for mental disorders under section 135 they are applied to claims for compensation for injuries under section 134.~~

~~Where the worker's condition results from a series of injuries rather than just one injury, section 151(3) is complied with if the application is filed within one year of the last injury in the series.~~

Compensation is not payable unless an application is filed within one year after the date of the worker's injury, mental disorder, death or disablement from occupational disease, unless an exception applies. This section is not complied with simply by reporting the injury, mental disorder, death or disablement from occupational disease to the first aid attendant or having it confirmed by witnesses.

For an injury, the date of injury is the date the worker experienced a physiological change subsequent to a work incident. A physiological change may result from a specific incident or a series of incidents occurring over a period of time.

For a mental disorder, the date of the worker's mental disorder is the date the worker experienced a psychological change subsequent to exposure to a work-related event(s) and/or stressor(s). A diagnosis of a mental disorder is not required to establish the date of psychological change.

Thus, the one year period for filing an application for compensation for an injury or mental disorder commences on the date of physiological change or psychological change respectively, which is not necessarily the same as the date of subsequent disablement.

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~~The section is not complied with simply by reporting the injury to the first aid attendant or having it confirmed by witnesses. The one year period commences at the date of injury, mental disorder or death, and except in the case of occupational diseases, not at the date of subsequent disablement. In the case of occupational diseases, reference should be made to Section A. of Item C4-26.00.~~

EFFECTIVE DATE: ~~October 21, 2020~~ **May 1, 2024**

CROSS REFERENCES: **Item C3-12.00, Personal Injury;**
Item C4-26.00, "Date of Injury" for Occupational Disease,
(Section A. General);
Policy item #93.22, *Application Made Out of Time*, of the
Rehabilitation Services & Claims Manual, Volume II.

HISTORY: **May 1, 2024 – Policy amended to clarify the approach to determine the date of a worker's mental disorder for the purpose of commencing the time limit to apply for compensation.**

October 21, 2020 – Amended to reflect amendment to limitation period provision in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020.

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

December 1, 2013 – Policy amended to clarify that then section 55 of the *Act* applied to claims for compensation of mental disorders under then section 5.1, in the same manner as it is applied to compensation for injuries under then section 5.

APPLICATION: Applies to all decisions, **including appellate decisions**, made on or after ~~October 21, 2020~~ **May 1, 2024**.

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#93.22 *Application Made Out of Time*

Before an application for compensation can be considered on its merits, it must satisfy the requirements of sections 151 and 152. It is important to distinguish between the decision on the merits of the claim and the decision made under section 151 or section 152, since the distinction may affect the rights of appeal which a person has to challenge the decision. A separate decision on the effect of section 151 or section 152 must always be reached on a claim.

Section 151, in part, provides:

- (4) The Board may pay the compensation provided under this Part [Part 4 – Compensation to Injured Workers and Their Dependants] if
 - (a) an application is not filed within the period referred to in subsection (3) [see policy item #93.21],
 - (b) the Board is satisfied that special circumstances existed that precluded filing within that period, and
 - (c) the application is filed within 3 years after the date referred to in subsection (3).
- (5) The Board may pay the compensation provided under this Part for the period beginning on the date the Board receives an application for compensation if
 - (a) an application is not filed within the period required to in subsection (3),
 - (b) the Board is satisfied that special circumstances existed that precluded filing within that period, and
 - (c) the application is filed more than 3 years after the date referred to in subsection (3).

Section 152 of the *Act* provides:

- (1) The Board may pay the compensation provided under this Part if
 - (a) the application for compensation arises from a worker's death or disablement due to an occupational disease,
 - (b) sufficient medical or scientific evidence was not available on the date referred to in section 151(3) for the Board to recognize the

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disease as an occupational disease and this evidence became available on a later date, and

- (c) the application is filed within 3 years after the date that sufficient medical or scientific evidence, as determined by the Board, became available to the Board.
- (2) If, since July 1, 1974, the Board considered an application for compensation under the equivalent of this section or section 151 in respect of a worker's death or disablement from occupational disease, the Board may reconsider the application but must apply subsection (1) of this section in the reconsideration.

The general effect of these provisions is that two requirements must be met before an application received outside the one year period can be considered on its merits. These are:

1. Special circumstances must have existed that precluded the application from being filed within that period. **“Precluded” in this situation means to have made difficult or otherwise hindered.**, and
2. The Board must exercise its discretion to pay compensation.

The application cannot be considered on its merits if no such special circumstances existed or the Board declines to exercise its discretion in favour of the worker. Each of these two requirements of section 151(4)(b) must be considered separately.

1. Special Circumstances

It is not possible to define in advance all the possible situations that might be recognized as special circumstances that precluded filing an application. The particular circumstances of each case must be considered and a judgment made. However, it should be made clear that in determining whether special circumstances existed, the concern is solely with the worker's reasons for not submitting an application within the one-year period. No consideration is given to whether or not the claim is otherwise a valid one. If the worker's reason for not submitting an application in time are not sufficient to amount to special circumstances, the application is barred from consideration on the merits, notwithstanding that the evidence clearly indicates that the worker did ~~suffer~~ **have an genuine work injury, mental disorder, death or disablement from occupational disease.**

The following facts illustrate a situation where special circumstances were found to exist. The worker incurred a minor right wrist injury on ~~October 20, 1976~~, which at the time caused no disablement from work and

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did not require the worker to seek medical attention. There was, therefore, no reason why the worker should claim compensation from the Board, nor any reason why the worker's doctor or employer should submit reports to the Board. It was not until 1978 **two years later** when the worker began to experience problems with the right wrist that the worker submitted a claim to the Board. It was only then that the worker was incurring monetary losses for which compensation might be appropriate.

Special circumstances may also include lack of awareness that an injury, mental disorder, or occupational disease might be work-related. If the nature, extent, or symptoms of the injury, mental disorder, or occupational disease preclude a worker from filing within the time period, this may also constitute special circumstances.

2. Discretion of the Board

Assuming the Board accepts that there were special circumstances that precluded the worker from submitting an application within the one-year period, the second requirement of section 151(4)(b) must then be dealt with. The question arises as to whether or not the Board should exercise its discretion to pay compensation.

Once special circumstances within the meaning of section 151(4)(b) have been shown to exist, the Board should in general exercise its discretion under that section in favour of allowing workers' applications to be considered on their merits. However, the Board cannot automatically exercise its discretion in every case in this way without having regard to the particular facts of each claim.

The exercise of the Board's discretion depends on the extent to which the lapse of time since the injury has prejudiced the Board's ability to carry out the necessary investigations into the validity of the claim. The length of time elapsed will be a significant factor here, together with the nature of the injury, **mental disorder, death or disablement from occupational disease**. Also significant will be whether there are witnesses or other persons to whom the worker reported the injury, **mental disorder, death or disablement from occupational disease** and from whom the worker sought treatment for it who are still able to provide accurate statements to the Board. The Board will not exercise its discretion under section 151(4) in favour of allowing an application to be considered where, because of the time elapsed, sufficient evidence to determine the occurrence of the injury and its relationship to the worker's complaints cannot now be obtained.

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The facts of the case discussed above illustrate a situation where, even though there were special circumstances precluding the worker from submitting an application within the one-year period, the Board decided to exercise its discretion against allowing the worker's application to be considered on its merits. The fact that the initial injury was a minor one which caused no immediate problems and required no medical treatment meant that it was impossible to obtain detailed evidence as to the real nature of the original injury. Furthermore, this was a case where detailed medical evidence of this nature would be particularly necessary since, on the face of it, it would be hard to relate the worker's complaints to such a minor injury two years before.

The exercise of the Board's discretion under section 151(4) may, in some cases, appear in substance to be closely related to the question that would arise on the merits of the claim as to whether the injury, **mental disorder, death or disablement from occupational disease** in question occurred and whether it caused the worker's subsequent complaints. If there is now an inability to obtain evidence regarding the original injury, that would normally mean that the claim would be disallowed on the merits for lack of evidence to support it. On the other hand, there will be cases where, notwithstanding the Board's exercising its discretion in favour of allowing an application to be considered the claim will nevertheless be disallowed on the merits. For the reason connected with the appeals system outlined at the beginning of policy item #93.22, it is always necessary, in any event, to separate the decision on the merits and the exercise of discretion under section 151(4).

EFFECTIVE DATE:	June 1, 2009 May 1, 2024
HISTORY:	May 1, 2024 – Policy amended to clarify special circumstances which may have precluded filing an application for compensation within the time limit. April 3, 2023 – Housekeeping changes consequential to implementing the <i>Workers Compensation Amendment Act (No. 2), 2022</i> (Bill 41). April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted reference to Board officer. March 3, 2003 – Inserted new wording of then section 55(3.3) of the <i>Workers Compensation Act</i> , R.S.B.C. 1996, c 492.
APPLICATION:	Applies to all decisions, including appellate decisions, made on or after June 1, 2009 May 1, 2024 .

RE: "Date of Injury" For Occupational Disease

ITEM: C4-26.00

BACKGROUND

1. Explanatory Notes

This policy sets out the decision-making principles for determining the “date of injury” for occupational disease.

2. The Act

Section 136, in part:

- (1) Compensation is payable under this Part [Part 4 – Compensation to Injured Workers and Their Dependants] in relation to an occupational disease, as if the disease were a personal injury arising out of and in the course of a worker’s employment, if
 - (a) as applicable,
 - (i) the worker has an occupational disease that disables the worker from earning full wages at the work at which the worker was employed, or
 - (ii) the death of the worker is caused by an occupational disease, and
 - (b) the occupational disease is due to the nature of any employment in which the worker was employed, whether under one or more employments.
- (2) For the purposes of subsection (1), the date of disablement must be treated as the occurrence of the injury.

...

Section 151:

- (1) An application for compensation must

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- (a) be made on the form directed by the Board or prescribed by regulation, and
 - (b) be signed by the worker or the worker's dependant making the application.
- (2) If the Board is satisfied that compensation is payable, it may be paid without an application.
- (3) Except as provided in this section and section 152, no compensation is payable unless an application for compensation is filed, or a determination under subsection (2) of this section is made, within one year after the date of the worker's injury, mental disorder, death or disablement from occupational disease.
- (4) The Board may pay the compensation provided under this Part [Part 4 – Compensation to Workers and Their Dependants] if
- (a) an application is not filed within the period referred to in subsection (3),
 - (b) the Board is satisfied that special circumstances existed that precluded filing within that period, and
 - (c) the application is filed within 3 years after the date referred to in subsection (3).
- (5) The Board may pay the compensation provided under this Part [Part 4 – Compensation to Workers and Their Dependants] for the period beginning on the date the Board receives an application for compensation if
- (a) an application is not filed within the period referred to in subsection (3),
 - (b) the Board is satisfied that special circumstances existed that precluded filing within that period, and
 - (c) the application is filed more than 3 years after the date referred to in subsection (3).

Section 152:

- (1) The Board may pay the compensation provided under this Part [Part 4 – Compensation to Workers and Their Dependants] if

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- (a) the application for compensation arises from a worker's death or disablement due to an occupational disease,
 - (b) sufficient medical or scientific evidence was not available on the date referred to in section 151(3) for the Board to recognize the disease as an occupational disease and this evidence became available on a later date, and
 - (c) the application is filed within 3 years after the date that sufficient medical or scientific evidence, as determined by the Board, became available to the Board.
- (2) If, since July 1, 1974, the Board considered an application for compensation under the equivalent of this section or section 151 in respect of a worker's death or disablement from occupational disease, the Board may reconsider the application but must apply subsection (1) of this section in the reconsideration.

POLICY

A. GENERAL

For the purposes of establishing a wage rate on a claim for occupational disease (determining the average earnings and earning capacity of the worker at the time of the injury), the Board considers the date the worker's occupational disease disables the worker from earning full wages as the occurrence of the injury. A worker will be considered disabled for this purpose when the worker is no longer able to perform the worker's regular employment duties and as such would in the ordinary course sustain a loss of earnings as a result. This date may or may not correspond with the date the worker was first diagnosed with the occupational disease.

The date of the worker's first seeking treatment by a physician or qualified practitioner for the occupational disease is used for administrative purposes. For example, this date will be used where there is no lost earnings. Where the worker's condition was not at that time diagnosed as an occupational disease, the relevant date is the date the occupational disease is first diagnosed. ~~These dates may also, in the absence of evidence to the contrary, be used as the date of disablement for the purpose of determining compensation entitlement under sections 151 and 152 of the Act.~~

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B. TIME LIMITS AND DELAYS IN APPLYING FOR COMPENSATION

A person must apply for compensation for death or disablement due to an occupational disease within the time limits set out in sections 151 and 152 of the *Act*. That person can be the worker or the worker's dependant(s) if the worker has died. People who delay in applying for compensation may lose or limit their right to compensation because the Board can only consider an application on its merits if the requirements of section 151 are met. One of the purposes of these time limits is to ensure the Board is given early notice of the claim so that the relevant evidence can be obtained when it is more readily available.

A person applying for compensation for an occupational disease must generally do so within one year of the date of death or disablement (in most cases a disablement will precede any death). There are exceptions provided in sections 151(4) and 151(5), as noted below. If the worker is alive and if the occupational disease has never caused a disablement, then time has not yet started to elapse for the purposes of section 151.

Section 151(3) provides:

~~Except as provided in this section and section 152, no compensation is payable unless an application for compensation is filed, or a determination under subsection (2) of this section is made, within one year after the date of the worker's injury, mental disorder, death or disablement from occupational disease~~

Where a worker has experienced more than one period of disablement from the occupational disease for which the worker intends to claim, then each period of disablement will have to be individually considered to determine if the requirements of section 151 are met with respect to that period.

Under the terms of a predecessor to the current section 152, a claim must be denied if a person applies to the Board more than one year after the worker's most recent disablement or after the worker's death if:

- the death occurred before January 1, 1974, or
- the most recent disablement occurred before January 1, 1974 and the exposure to the cause of the occupational disease in British Columbia did not continue beyond that date.

C. APPLICANTS WHO FILE WITHIN THREE YEARS

The Board may consider paying compensation even though a person applies more than one year after the death or disablement due to the occupational disease if:

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- the worker or dependant applies within three years after the death or disablement, and
- special circumstances precluded applying within one year.

Special circumstances are discussed in policy item #93.22.

If special circumstances do not exist, the Board cannot consider the claim, unless it meets section 152(1), because the application will be out of time (~~see Section I., below~~).

D. APPLICANTS WHO FILE BEYOND THREE YEARS

A person who applies more than three years after the date of death or disablement due to the occupational disease might still receive compensation under section 151(5). If special circumstances precluded applying within one year, the Board may still consider starting compensation payments from the date the Board received the application. However, the Board cannot consider compensation payments for periods before that date, unless the claim meets the requirements of section 152(1).

If special circumstances do not exist, the Board cannot consider an application more than three years after the date of death or disablement due to an occupational disease if it does not meet the requirements of section 152(1), because the application will be out of time.

E. NEWLY RECOGNIZED OCCUPATIONAL DISEASES

As noted in Section A. of Item C4-25.00, it is often more difficult to determine whether a person's employment caused a disease than to determine whether it caused a personal injury. Our knowledge about the role a particular kind of employment may have in causing various diseases changes over time. In recognition of this difficulty, section 152 applies only to claims for occupational disease.

The Board may consider paying compensation for a death or disablement due to an occupational disease if all three of the following conditions apply:

1. At the time of the worker's death or disablement, the Board does not have sufficient medical or scientific evidence to recognize the disease as an occupational disease for this worker's kind of employment (even though the Board may have recognized it as an occupational disease for other kinds of employment).
2. The Board subsequently obtains sufficient medical or scientific evidence to enable it to recognize the disease as an occupational disease for this worker's kind of employment.

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3. The application for compensation is filed within three years after the date the Board recognized the disease as an occupational disease for the worker's kind of employment.

The Board is not precluded from recognizing a disease by order dealing with a specific case, even if the disease occurs prior to the Board designating or recognizing it under one of sections 138(1), 138(2), or 138(4) (see Item C4-25.00, Section E.).

If, after July 1, 1974, and before August 26, 1994, the Board has considered an application for compensation in respect of a worker's death or disablement from occupational disease, and has determined that all or part of the claim cannot be paid because of the wording of former section 55 then in effect, the Board may now under section 152(2) reconsider the claim and pay compensation for those periods previously denied if it meets the requirements of section 152(1).

For example, in the 1970s sufficient medical or scientific evidence was not available for the Board to recognize an association between exposure to coal tar pitch volatiles in aluminum smelters and an excess risk of bladder cancer. It was not until the late 1980s that sufficient evidence became available for the Board to recognize such an association. (However, the Board had earlier recognized that there was an association between bladder cancer and prolonged exposure to certain chemicals used primarily in the manufacture of rubber and dyes. In 1980 "primary cancer of the epithelial lining of the urinary bladder" was added to then Schedule B (now Schedule 1), with a corresponding presumption in favour of causation where the worker had prolonged exposure to any of three listed chemicals.)

On March 13, 1989, the Board issued a policy directive recognizing bladder cancer as an occupational disease for workers employed in aluminum smelting, dependent on the concentration and length of exposure to coal tar pitch volatiles.

Section 152(1) allows the Board to consider the payment of compensation for any worker disabled by bladder cancer who was exposed to sufficient doses of coal tar pitch volatiles while employed in the aluminum smelting industry if:

- the exposure did not end before January 1, 1974, and
- the Board received the application not later than March 13, 1992.

Section 152(2) allows the Board to reconsider any claims for bladder cancer that meet the requirements of section 152(1) and to pay compensation for any periods previously denied because of the wording of the earlier former section 55 in effect since July 1, 1974. The language of section 152 came into effect on August 26, 1994. If a claim for bladder cancer is filed after March 13, 1992, then the requirements of sections 151(3), (4), or (5) must be met before compensation can be paid.

F. DISCRETION TO PAY COMPENSATION

As stated in policy item #93.22, even though special circumstances may have precluded the filing of the application within one year, the Board has discretion under section 151 whether or not to pay compensation. In exercising that discretion, the Board considers whether the time elapsed since the death or disability due to the occupational disease has prejudiced its ability to investigate the merits of the claim, including determining whether the worker was disabled from earning full wages at the work at which the worker was employed.

The Board considers the availability of evidence, such as:

- medical records about the worker’s state of health at relevant times (cause of death in the case of a deceased worker)
- employment records that may document exposures to contaminants or hazardous processes, or periods of disability that may have been due to the occupational disease
- evidence from co-workers or others who may know about the worker’s employment activities.

The Board will generally decide not to pay compensation if so much time has elapsed that it cannot reasonably obtain sufficient evidence to determine whether:

- the worker’s disease was causally connected to the employment, or
- the worker was disabled by the disease when claimed.

A request for review by the Review Division can be made on a Board decision not to pay compensation.

~~Where a worker has experienced more than one period of disablement from the occupational disease for which the worker intends to claim, then each period of disablement will have to be individually considered to determine if the requirements of section 151 are met with respect to that period.~~

EFFECTIVE DATE:	October 21, 2020 May 1, 2024
AUTHORITY:	Section 136 of the Act.
CROSS REFERENCES:	Item C4-25.00, <i>Occupational Disease</i> ; Policy item #93.21, Time Allowed for Submission of Application;

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HISTORY:

Policy item #93.22, *Application Made Out of Time*;
Appendix 2, Schedule 1, of the *Rehabilitation Services & Claims Manual*,
Volume II.

May 1, 2024 – Policy amended to clarify language related to time limits for applying for compensation for occupational disease.

October 21, 2020 – Amended to reflect amendment to limitation period provision in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020.

April 6, 2020 – This policy resulted from the consolidation of former policy items #32.50, #32.55, #32.56, #32.57, #32.58, and #32.59, consequential to the implementation of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

June 1, 2009 – Former policy item #32.50 deleted references to Board officer.

October 1, 2007 – Former policy item #32.50 was revised to delete reference to assigning a claim member.

March 3, 2003 – Former policy item #32.58 was amended to reflect the new wording of then section 55(3.3). Former policy item #32.59 was revised to reference the Review Division.

APPLICATION:

Applies to all decisions, **including appellate decisions**, made on or after October 21, 2020 **May 1, 2024**.