

2024/02/06-02**WORKERS' COMPENSATION BOARD
(WorkSafeBC)****RESOLUTION OF THE BOARD OF DIRECTORS****RE: Assessments – Evidence and Standard of Proof****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:

Pursuant to Resolution No. 2003/02/11-04, the policies of the Board of Directors include the policies in the *Rehabilitation Services & Claims Manual*, Volume II (*RS&CM*), and the *Assessment Manual*;

AND WHEREAS:

Policy item #97.00, *Evidence*, of the *RS&CM* includes guidance on evidentiary principles and the standard of proof for decisions respecting the compensation or rehabilitation of a worker;

AND WHEREAS:

The *Assessment Manual* lacks similar guidance, and not all the principles of policy item #97.00 are directly applicable to assessment decisions;

AND WHEREAS:

The Policy, Regulation and Research Department developed amendments to policy in Item AP1-1-0, *Application of the Act and Policies*, of the *Assessment Manual*, to provide guidance on the evidentiary principles and the standard of proof applicable to assessment matters;

AND WHEREAS:

The Policy, Regulation and Research Department has brought the proposed amendments to WorkSafeBC's Policy and Practice Consultative Committee;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. The amendments to Item AP1-1-0, *Application of the Act and Policies*, of the *Assessment Manual*, as set out in Appendix 1 attached to this resolution, are approved, and apply to all decisions made on or after May 1, 2024.
2. This resolution is effective February 6, 2024.
3. 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

RE: Application of the *Act* and Policies

ITEM: AP1-1-0

BACKGROUND

1. Explanatory Notes

Decision-making at the Workers' Compensation Board is governed by the *Workers Compensation Act*.

Section 319 of the *Act* authorizes the Board of Directors to set and revise the Board's policies. These policies are of broad general application and provide further direction to the Board in dealing with individual matters.

Section 339(2) of the *Act* requires the Board to make decisions based on the merits and justice of the case, but in doing this the Board must apply the policies of the Board of Directors that are applicable in that case.

Section 245(1) of the *Act* imposes a self-reporting system by requiring employers to provide the Board with the amount of their payrolls and any further information required by the Board.

The purpose of the POLICY in this Item is to provide direction regarding the interaction between the application of the *Act* and the policies made under the *Act* and the consideration of the individual circumstances of the case.

The POLICY does not comment on documents issued under the authority of the President/Chief Executive Officer of the Board. That is a matter for the President/Chief Executive Officer to address.

2. The Act

Section 245(1):

An employer must do the following:

- (a) keep at all times at a place in British Columbia complete and accurate particulars of the employer's payrolls;**
- (b) notify the Board of the current location of the place referred to in paragraph (a);**

- (c) provide to the Board an estimate of the probable amount of the payroll of each of the employer's industries within the scope of the compensation provisions, together with any further information required by the Board,
 - (i) when the employer becomes an employer within the scope of those provisions, and
 - (ii) at other times as required by Board regulation of general application or by an order of the Board limited to a specific employer;
- (d) provide to the Board certified copies of reports of the employer's payrolls, on or after the end of each calendar year and at the other times and in the manner required by the Board.

Section 319:

The board of directors must set and revise as necessary the policies of the board of directors, including policies respecting occupational health and safety, compensation, rehabilitation and assessment.

Section 339(2):

The Board must make its decision based on the merits and justice of the case, but in doing this the Board must apply the policies of the board of directors that are applicable in that case.

POLICY

A. APPLYING THE ACT AND POLICIES IN DECISION-MAKING

In making decisions, the Board must take into consideration:

1. the relevant provision or provisions of the *Act*;
2. the relevant policy or policies in this *Manual*; and
3. all facts and circumstances relevant to the case.

By considering the relevant provisions of the *Act*, the relevant policies, and the relevant facts and circumstances, the Board ensures that:

1. similar cases are adjudicated in a similar manner;
2. each participant in the system is treated fairly; and
3. the decision-making process is consistent and reliable.

Section 339(2) of the *Act* provides that:

The Board must make its decision based on the merits and justice of the case, but in doing this the Board must apply the policies of the board of directors that are applicable in that case.

Section 339(2) requires the Board to make all its decisions based on the merits and justice of the case. In making decisions, the Board must take into account all relevant facts and circumstances relating to the case before it, ~~including the worker's individual circumstances~~. This is required, among other reasons, in order to comply with section 339(2) of the *Act*. In doing this, the Board must consider the relevant provisions of the *Act*. If there are specific directions in the *Act* that are relevant to those facts and circumstances, the Board is legally bound to follow them.

Section 339(2) also requires the Board to apply the policies of the Board of Directors that are applicable to the case before it. The policies reflect the obligations and discretion delegated to the Board under the *Act*. Each policy creates a framework that assists and directs the Board in its decision-making role when certain facts and circumstances come before it. If such facts and circumstances arise and there is an applicable policy, the policy must be applied. Where the *Act* and policy provide for Board discretion, the Board is also required to exercise the discretion based upon the merits and justice of the case, in accordance with the *Act* and applicable policies.

All substantive and associated practice components in the policies in this *Manual* are applicable under section 339(2) of the *Act* and must be applied in decision-making. The term “associated practice components” for this purpose refers to the steps outlined in the policies that must be taken to determine the substance of decisions. Without these steps being taken, the substantive decision required by the *Act* and policies could not be made.

References to business processes that appear in policies are only applicable under section 339(2) of the *Act* in decision-making to the extent that they are necessary to comply with the rules of natural justice and procedural fairness. The term “business processes” for this purpose refers to the manner in which the Board conducts its operations. These business processes are not intrinsic to the substantive decisions required by the *Act* and the policies.

If a policy requires the Board to notify an employer, worker, or other workplace party before making a decision or taking an action, the Board is required to notify the party if practicable. “If practicable” for this purpose means that the Board will take all reasonable steps to notify, or communicate with, the party.

This policy item is not intended to comment on the application of practice directives, guidelines and other documents issued under the authority of the President/Chief Executive Officer of the Board. The application of those documents is a matter for the President/Chief Executive Officer to address.

B. EVIDENCE AND STANDARD OF PROOF

Although there is no burden of proof on employers, employers are required under the Act to self-report their assessment matters accurately. Employers must maintain complete and accurate particulars of their payrolls and provide the amount of their payroll and any further information required by the Board.

Evidence must be submitted by the employer to show the fundamental facts of the issue before the Board. The extent of the evidence necessary and the weight attached to it is determined by the Board.

The Board evaluates the evidence and determines whether it is sufficiently complete and reliable to arrive at a sound conclusion with confidence. If not, the Board advises the employer how the evidence is insufficient and provides them with an opportunity to provide further evidence.

Where the evidence is sufficiently complete and reliable, the Board weighs the evidence in accordance with the standard of proof.

The term “standard of proof” refers to the level of certainty required to prove the issue in question. For assessment decisions, the standard of proof is the balance of probabilities, which means “more likely than not.”

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

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| EFFECTIVE DATE: | July 1, 2019 May 1, 2024 |
| AUTHORITY: | Sections 245(1) , 319 and 339(2) of the <i>Act</i> . |
| CROSS REFERENCES: | Item AP5-245-1, <i>Registration of Employers, of the Assessment Manual.</i> |
| HISTORY: | <p>May 1, 2024 – Amended to provide guidance on evidence requirements and clarify the standard of proof for assessment decisions.</p> <p>April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i>, R.S.B.C. 2019, c. 1.</p> <p>July 1, 2019 – Amendments were made to emphasize the obligation of the Board to base its decisions on the merits and justice of the case and delete references to Board officers.</p> <p>March 3, 2003 – Item was developed to implement the <i>Workers Compensation Amendment Act (No. 2), 2002</i> (Bill 63 of 2002).</p> |
| APPLICATION: | This policy applies to all decisions made on or after July 1, 2019 May 1, 2024 . |