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February 2020 Update 2020 – 02

TO: HOLDERS OF THE *REHABILITATION SERVICES & CLAIMS MANUAL* – VOLUME II

This update of the *Rehabilitation Services & Claims Manual* contains amendments in the *Manual* implemented since update 2020-01.

The revised pages are amendments to:

- Table of Contents
- Policy item #27.00 – *Activity-related Soft Tissue Disorders ("ASTDs") of the Limbs*
- Various chapters relating to Evidence and Decision-Making:
    - Item C3-13.00, *Mental Disorders*
    - Item C3-13.10, *Section 5.1(1.1) Mental Disorder Presumption*
    - Item C3-14.00, *Arising out of and In the Course of the Employment*
    - Item C3-14.20, *Accident – Section 5(4) Presumption*
    - Item C3-15.00, *Injuries Following Natural Body Motions at Work*
    - Item C3-16.00, *Pre-Existing Conditions or Diseases*
    - Item C3-18.00, *Personal Acts*
    - Item C3-21.00, *Extra-Employment Activities*
    - Item C3-22.20, *Compensable Consequences -- Pain and Chronic Pain*
    - Item C3-22.40, *Compensable Consequences – Certain Diseases and Conditions*
    - Policy item 26.10, *Suffers From an Occupational Disease*
    - Policy item 26.20, *Establishing Work Causation*
    - Policy item 26.21, *Schedule B Presumption*
    - Policy item 26.23, *Non-Scheduled Recognition and Standard of Proof*
    - Policy item 26.50, *Natural Degeneration of the Body*
    - Policy item 27.20, *ASTDs Listed in Schedule B Where No Presumption Applies*
    - Policy item 27.30, *ASTDs Recognized by Regulation*
    - Policy item 28.10, *Scabies*
    - Policy item 29.20, *Asthma*

    - Policy item 30.50, *Contact Dermatitis*
    - Policy item 31.00, *Hearing Loss*
    - Policy item 31.20, *Amount and Duration of Noise Exposure Required by Section 7*
    - Policy item 31.40, *Amount of Compensation under Section 7*
    - Policy item 34.55*, Subsequent Non-Compensable Incidents*
    - Policy item 35.21, *Suitable Occupation*
    - Policy item 35.30, *Duration of Temporary Disability Benefits*
    - Policy item 41.00, Duration of Permanent Disability Periodic Payments
    - Item C8-56.70, *Compensation on the Death of a Worker*
    - *Calculation of Compensation - Persons with a Reasonable Expectation of Pecuniary Benefit*
    - Policy item 68.40, *Employment Insurance Payments*
    - Policy item 68.90, Principals – *Composition of Earnings*
    - Item C11-88.90, *Vocational Rehabilitation Relocation*
    - Policy item 97.00, *Evidence*
    - Policy item 97.10, *Evidence Evenly Weighted*
    - Policy item 97.34, *Conflict of Medical Opinion*
- Policies relating to Vocational Rehabilitation:
    - Item C11-85.00, *Principles and Goals*
    - Item C11-88.00, *Nature and Extent of Programs and Services*
    - Item C11-89.10, *Income Continuity*

A summary is attached and the amended pages are included as part of the package effective **February 1, 2020.**

These amended pages and the complete manual are available at http://www.worksafebc.com/regulation_and_policy/default.asp.

Ian Shaw
Senior VP and General Counsel

Attachments

***Rehabilitation Services & Claims Manual,* Volume II**

SUMMARY OF AMENDMENTS – Update 2020 – 02

Chapter 3	Pages 3 to 8	Item C3-13.00 amended
	Pages 5 to 7	Item C3-13.10 amended
	Pages 1 to 5	Item C3-14.00 amended
	Pages 1 to 2	Item C3-14.20 amended
	Page 3	Item C3-15.00 amended
	Pages 1 to 3	Item C3-16.00 amended
	Pages 1 to 3	Item C3-18.00 amended
	Pages 1 to 2	Item C3-21.00 amended
	Pages 7 to 8	
	Pages 1 to 4	Item C3-22.20 amended
	Pages 1 to 4	Item C3-22.40 amended
Chapter 4	Pages 9 to 76	Policy item #26.10 amended
		Policy item #26.20 amended
		Policy item #26.21 amended
		Policy item #26.23 amended
		Policy item #26.50 amended
		Policy item #27.20 amended
		Policy item #27.30 amended
		Policy item #28.10 amended
		Policy item #29.20 amended
		Policy item #30.50 amended
		Policy item #31.00 amended
		Policy item #31.20 amended
		Policy item #31.40 amended
Chapter 5	Pages 15 to 16	Policy item #34.55 amended
	Pages 21 to 22	Policy item #35.21 amended
	Pages 25 to 26	Policy item #35.30 amended
Chapter 6	Pages 21 to 26	Policy item #41.00 amended
Chapter 8	Pages 1 to 3	Item C8-56.70 amended
Chapter 9	Pages 23 to 30	Policy item #68.40 amended
		Policy item #68.90 amended
Chapter 11	Pages 1 to 4	Item C11-85.00 amended
	Pages 3 to 5	Item C11-88.00 amended
	Pages 3 to 4	Item C11-88.90 amended
	Pages 1 to 4	Item C11-89.10 amended
Chapter 12	Pages 25 to 36	Policy item 97.00 amended
		Policy item 97.10 amended
		Policy item 97.34 amended

Section 5.1 of the *Act* sets out that a worker may be entitled to compensation for a mental disorder that does not result from an injury. This is distinct from a worker's entitlement under section 5(1) for psychological impairment that is a compensable consequence of an injury.

For decisions respecting the compensation or rehabilitation of a worker, the standard of proof under section 99(3) of the *Act* is "at least as likely as not." If the evidence supporting different findings on an issue is evenly weighted, the issue is resolved in favour of the worker.

This standard of proof is different than medical or scientific standards of certainty. Therefore, the presence or absence of expert evidence supporting or opposing a causal link is relevant and will generally be given weight by the Board, but it is not determinative of causation; causation can be inferred from other evidence. In every case, the Board decides whether the evidence supports a finding of causation based on a weighing of the evidence.

The gathering and weighing of evidence generally is covered in policy items #97.00 through #97.70.

A. Does the worker have a DSM diagnosed mental disorder?

Section 5.1 requires more than the normal reactions to traumatic events or significant work-related stressors, such as being dissatisfied with work, upset or experiencing distress, frustration, anxiety, sadness or worry as those terms are widely and informally used.

It requires that a worker's mental disorder be diagnosed by a psychiatrist or a psychologist as a condition that is described in the most recent DSM, at the time of diagnosis.

As set out in the DSM, a DSM diagnosis generally involves a comprehensive and systematic clinical assessment of the worker.

The Board is responsible for the decision-making process, and for reaching the conclusions on the claim. Under section 5.1(2) of the *Act*, the Board may obtain expert advice to review the diagnosis and where required, may obtain additional diagnostic assessment.

In reviewing the diagnosis, the Board also considers all of the relevant medical evidence, including prior medical history, attending physician reports and expert medical opinion. The findings of this additional information are considered in determining whether there is a DSM diagnosed mental disorder.

B. Was there one or more events, or a stressor, or a cumulative series of stressors?

In all cases, the one or more events, stressor or cumulative series of stressors, must be identifiable.

C. Was the event "traumatic" or the work-related stressor "significant"?

All workers are exposed to normal pressures and tensions at work which are associated with the duties and interpersonal relations connected with the worker's employment.

The Board recognizes that workers may, due to the nature of their work, be exposed to traumatic events or significant stressors as part of their employment. An event may be traumatic or a stressor significant even though the worker has previous work-related exposure to traumatic events or significant stressors.

In determining whether the event is traumatic or the stressor is significant, the worker's subjective statements and response to the event or stressor are considered. However, this question is not determined solely by the worker's subjective belief about the event or stressor. It involves both a subjective and objective analysis.

For the purposes of this policy, a "traumatic" event is an emotionally shocking event. In most cases, the worker must have experienced or witnessed the traumatic event.

A work-related stressor is considered "significant" when it is excessive in intensity and/or duration from what is experienced in the normal pressures or tensions of a worker's employment.

Interpersonal conflicts between the worker and his or her supervisors, co-workers or customers are not generally considered significant unless the conflict results in behavior that is considered threatening or abusive.

Examples of significant work-related stressors include exposure to workplace bullying or harassment.

D. Causation

(i) Was the mental disorder a reaction to one or more traumatic events arising out of and in the course of the worker's employment?

The *Act* requires that the mental disorder be a reaction to one or more traumatic events arising out of and in the course of the worker's employment. This requires the Board to determine the following:

- Did the one or more traumatic events arise in the course of the worker's employment?

  This refers to whether the one or more traumatic events happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the worker's employment.

- Did the one or more traumatic events arise out of the worker's employment?

  This refers to the cause of the mental disorder. Both employment and non-employment factors may contribute to the mental disorder. However, in order for the mental disorder to be compensable, the one or more traumatic events have to be of causative significance, which means more than a trivial or insignificant cause of the mental disorder.

In making the above determinations, the Board reviews the medical and non-medical evidence to consider whether:

- there is a connection between the mental disorder and the one or more traumatic events, including whether the one or more traumatic events were of sufficient degree and/or duration to be of causative significance in the mental disorder;

- any pre-existing non-work related medical conditions were a factor in the mental disorder; and

- any non-work related events were a factor in the mental disorder.

The Board is required to determine whether the evidence supports a finding of one or more traumatic events that are of causative significance in the mental disorder.

(ii) Was the mental disorder predominantly caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment?

The *Act* requires that the mental disorder be predominantly caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment. There are two parts to this requirement as set out below.

The first part is the determination of whether the significant stressor or cumulative series of significant stressors arose out of and in the course of employment. This requires the Board to determine the following:

- Did the significant stressor or cumulative series of significant stressors arise in the course of the worker's employment?

  This refers to whether the significant stressor, or cumulative series of significant stressors, happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the worker's employment.

- Did the significant stressor or cumulative series of significant stressors arise out of the worker's employment?

  A significant stressor or a cumulative series of significant stressors may be due to employment or non-employment factors. The *Act* requires that the significant stressors be work-related.

The second part is the determination of whether the significant work-related stressor, or cumulative series of significant work-related stressors, was the predominant cause of the mental disorder.

Predominant cause means that the significant work-related stressor, or cumulative series of significant work-related stressors, was the primary or main cause of the mental disorder.

Both parts of this requirement must be met in order for the mental disorder to be compensable.

(iii) Pre-existing Mental Disorders

Where a worker has a pre-existing mental disorder and claims that a traumatic event or significant work-related stressor aggravated the pre-existing mental disorder, the claim is adjudicated with regard to section 5.1 of the *Act* and the direction in this policy.

E. Section 5.1(1)(c) Exclusions

There is no entitlement to compensation if the mental disorder is caused by a decision of the worker's employer relating to the worker's employment. The *Act* provides a list of examples of decisions relating to a worker's employment which include a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment. This statutory list of examples is inclusive and not exclusive.

Other examples may include decisions of the employer relating to workload and deadlines, work evaluation, performance management, transfers, changes in job duties, lay-offs, demotions and reorganizations.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE: February 1, 2020

AUTHORITY: Sections 1 and 5.1 of the *Act*

CROSS REFERENCES:
Item C3-13.10, *Section 5.1(1.1) – Mental Disorder Presumption*;
Item C3-22.30, *Compensable Consequences – Psychological Impairment*;
Policy item #97.00, *Evidence*;
Policy item #97.10, *Evidence Evenly Weighted*;
Policy item #97.20, *Presumptions*;
Policy item #97.30, *Medical Evidence*;
Policy item #97.31, *Matter Requiring Medical Expertise*;
Policy item #97.32, *Statement of Worker about His or Her Own Condition*;
Policy item #97.33, *Statement by Lay Witness on Medical Question*;
Policy item #97.34, *Conflict of Medical Opinion*;
Policy item #97.35, *Termination of Benefits*;
Policy item #97.40, *Disability Awards*;
Policy item #97.50, *Rumours and Hearsay*;
Policy item #97.60, *Lies*;
Policy item #97.70, *Surveillance*.

HISTORY:
Amendments to provide guidance on the legal issues of standard of proof, evidence, and causation were made effective February 1, 2020.
On May 16, 2019, Bill 18 amended the definition of firefighter in sections 1 and 5.1 of the *Act*.
Consequential amendments arising from addition of policy item #97.70, *Surveillance* were made effective March 1, 2019.
Amendments to C3-13.00 to reflect changes to the *Act* resulting from Bill 9, the *Workers Compensation Amendment Act, 2018* were made effective July 23, 2018. Bill 9 came into force by Royal Assent on May 17, 2018; it added a mental disorder presumption to the *Act* for workers who are or have been employed in an eligible occupation, and revised the definition of firefighter in section 5.1 of the *Act* to include firefighters employed by the government of Canada.
Housekeeping changes made on January 1, 2018 to the definition of "psychologist" as amended by the *Act* effective November 2, 2017.
Housekeeping changes made on July 17, 2013 to remove references to multi-axial diagnostic assessment in accordance with DSM-5.
New Item C3-13.00 to reflect changes to the *Act* resulting from the *Workers Compensation Amendment Act, 2011.*

This policy replaces former Item C3-13.00 of the *Rehabilitation Services & Claims Manual*, Volume II, in its entirety.
Former Item C3-13.00 had replaced former policy item #13.30 by putting it into the new format.
Effective April 30, 2009, former policy item #13.30 was amended to delete references identified by the British Columbia Court of Appeal as being contrary to section 15(1) of the *Canadian Charter of Rights and Freedoms*.
On April 1, 2007, former policy item #13.30 was amended to delete the paragraph requiring workers with a recurrence of mental stress to meet the requirements of section 5.1, if their claims had initially been allowed prior to June 30, 2002. On December 31, 2003, former policy item #13.30 was amended to reflect the amendment of section 5.1(1) of the *Act*, to include a reference to a psychologist's diagnosis of mental stress, and the introduction of sections 5.1(2) to (4) of the *Act*. The amended policy applied to acute reactions to traumatic events that occur on or after December 31, 2003. Former policy item #13.30 had been created on June 30, 2002 to set out the scope of coverage for mental stress claims. It applied to all injuries on or after June 30, 2002; permanent disabilities where the permanent disability first occurred on or after June 30, 2002, irrespective of the date of the injury; and recurrences, where the recurrence occurred on or after June 30, 2002, irrespective of the date of the injury.

APPLICATION: Applies to all decisions made on or after February 1, 2020, respecting claims that involve section 5.1 of the *Act* made on or after July 23, 2018.

A. What is an eligible occupation?

The mental disorder presumption applies to a worker who is or has been employed in an eligible occupation as defined in the *Act* or prescribed by regulation of the Lieutenant Governor in Council.

B. Was the worker exposed to a "traumatic" event?

The *Act* requires the worker is exposed to one or more traumatic events. In all cases, the one or more events must be identifiable.

A "traumatic" event is an emotionally shocking event. In most cases, the worker must have experienced or witnessed the traumatic event.

The Board recognizes that workers employed in eligible occupations, due to the nature of their work, may be exposed to traumatic events as part of their employment.

In determining whether the event is traumatic the worker's subjective statements and response to the event are considered. However, this question is not determined solely by the worker's subjective belief about the event. It involves both a subjective and objective analysis.

C. DSM diagnosis

The *Act* requires a worker's mental disorder be diagnosed by a psychiatrist or a psychologist as a condition described in the most recent DSM, at the time of diagnosis. The *Act* also requires the mental disorder be recognized in the most recent DSM as a mental or physical condition that may arise from exposure to a traumatic event.

In reviewing the diagnosis, the Board recognizes a broad range of mental disorders may arise following exposure to a traumatic event. Some mental disorders recognized in the DSM explicitly list exposure to a traumatic event as a diagnostic criterion. This means exposure to a traumatic event is required for the diagnosis, for example post-traumatic stress disorder and acute stress disorder.

The Board also recognizes there are mental disorders set out in the DSM that do not require exposure to a traumatic event but may still arise from trauma. These include, but are not limited to, depressive disorders, anxiety disorders and substance use disorders.

D. Causation

The *Act* requires that the mental disorder must be presumed to be a reaction to the one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, unless the contrary is proved.

The Board is not required to establish that any specific traumatic event is causative of the worker's mental disorder.

E. Rebutting the presumption

Inclusion of the words "unless the contrary is proved" in section 5.1(1.1) means that the presumption is rebuttable. Where evidence which rebuts or refutes the presumption is available, it must be considered.

The standard of proof to be applied in determining whether the presumption has been rebutted is proof on a balance of probabilities. Balance of probabilities means "more likely than not." If the evidence is more heavily weighted in favour of a conclusion that something other than the employment caused the mental disorder, then the contrary will be considered to be proved and the presumption is rebutted. The presumption is not rebutted because there is a lack of evidence to support work causation.

The gathering and weighing of evidence generally is covered in policy items #97.00 through #97.70.

F. Pre-existing mental disorders

Where a worker who is or has been employed in an eligible occupation has a pre-existing mental disorder and claims that a traumatic event aggravated the pre-existing mental disorder, the claim is adjudicated with regard to section 5.1(1.1) of the *Act* and the direction in this policy.

For the presumption to apply, the pre-existing mental disorder must also be recognized in the most recent DSM as a mental or physical condition that may arise from exposure to a traumatic event.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE: February 1, 2020
AUTHORITY: Sections 1 and 5.1 of the *Act.*

CROSS REFERENCES:

Item C3-13.00, *Section 5.1 – Mental Disorders*;
Item C3-22.30, *Compensable Consequences – Psychological Impairment*;
Policy item #97.00, *Evidence*;
Policy item #97.10, *Evidence Evenly Weighted*;
Policy item #97.20, *Presumptions*;
Policy item #97.30, *Medical Evidence*;
Policy item #97.31, *Matter Requiring Medical Expertise*;
Policy item #97.32, *Statement of Worker about His or Her Own Condition*;
Policy item #97.33, *Statement by Lay Witness on Medical Question*;
Policy item #97.34, *Conflict of Medical Opinion*;
Policy item #97.35, *Termination of Benefits*;
Policy item #97.40, *Disability Awards*;
Policy item #97.50, *Rumours and Hearsay*;
Policy item #97.60, *Lies*;
Policy item #97.70, *Surveillance*.

HISTORY:

On February 1, 2020, amendments were made to provide guidance on the legal issues of standard of proof, evidence, and causation.
On May 16, 2019, Bill 18 amended the definition of firefighter in sections 1 and 5.1 of the *Act*.
On April 16, 2019, Order in Council No. 204 was approved, adding emergency response dispatchers, health care assistants, and nurses to the list of eligible occupations.
Consequential amendments arising from addition of policy item #97.70, *Surveillance* were made effective March 1, 2019.
New Item C3-13.10, *Section 5.1(1.1) – Mental Disorder Presumption,* to reflect changes to the *Act* resulting from Bill 9, the *Workers Compensation Amendment Act, 2018,* effective July 23, 2018. Bill 9 came into force by Royal Assent on May 17, 2018; it added a mental disorder presumption to the *Act* for workers who are or have been employed in an eligible occupation, and revised the definition of firefighter in section 5.1 of the *Act* to include firefighters employed by the government of Canada.

APPLICATION:

Applies to all decisions made on or after February 1, 2020, respecting claims that involve section 5.1 of the *Act* made on or after July 23, 2018.

RE: Arising Out of and In the Course of the Employment **ITEM: C3-14.00**

BACKGROUND

1. Explanatory Notes

This is the principal policy of this Chapter and sets out the decision-making principles for determining a worker's entitlement to compensation for personal injury or death under the *Act*.

2. The Act

Section 5(1):

> Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part must be paid by the Board out of the accident fund.

Section 99(3):

> If the Board is making a decision respecting the compensation or rehabilitation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the Board must resolve that issue in a manner that favours the worker.

POLICY

The test for determining if a worker's personal injury or death is compensable, is whether it arises out of and in the course of the employment. The two components of this test of employment connection are discussed below.

In applying the test of employment connection, it is important to note that employment is a broader concept than work and includes more than just productive work activity. An injury or death that occurs outside a worker's productive work activities may still arise out of and in the course of the worker's employment.

A. Meaning of "Arising Out of the Employment"

"Arising out of the employment" generally refers to the cause of the injury or death. In considering causation, the focus is on whether the worker's employment was of causative significance in the occurrence of the injury or death.

Both employment and non-employment factors may contribute to the injury or death. The employment factors need not be the sole cause. However, in order for the injury or death to be compensable, the employment has to be of causative significance, which means more than a trivial or insignificant aspect of the injury or death.

B. Meaning of "In the Course of the Employment"

"In the course of the employment" generally refers to whether the injury or death happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the employment. Time and place are not strictly limited to the normal hours of work or the employer's premises.

C. Evidence

The Board considers both medical and non-medical evidence to determine whether a worker's injury or death arises out of and in the course of the employment.

For decisions respecting the compensation or rehabilitation of a worker, the standard of proof under section 99(3) of the *Act* is "at least as likely as not." If the evidence supporting different findings on an issue is evenly weighted, the issue is resolved in favour of the worker.

This standard of proof is different than medical or scientific standards of certainty. Therefore, the presence or absence of expert evidence supporting or opposing a causal link is relevant and will generally be given weight by the Board, but it is not determinative of causation; causation can be inferred from other evidence. In every case, the Board decides whether the evidence supports a finding of causation based on a weighing of the evidence.

i. Medical

When reviewing medical evidence, the Board considers whether:

- there is a physiological association between the injury or death and the employment activity, including whether the activity was of sufficient degree and/or duration to be of causative significance in the injury or death;

- there is a temporal relationship between the work activity and the injury or death; and

- any non-work related medical conditions were a factor in the resulting injury or death.

The Board also considers any other relevant medical evidence to assist in determining whether a worker's injury or death arises out of and in the course of the employment.

ii. Non-Medical

In addition to medical evidence, the Board considers the factors described below. All of the factors listed may be considered in making a decision, but no one of them may be used as an exclusive test for deciding whether an injury or death arises out of and in the course of the employment. This list is by no means exhaustive, and relevant factors not listed in policy may also be considered.

Other policies in this chapter may provide further guidance as to whether the injury or death arises out of and in the course of the employment in particular situations.

1. On Employer's Premises

Did the injury or death occur on the employer's premises? If so, this factor favours coverage.

An employer's premises includes any land or buildings owned, leased, rented, or controlled (solely or shared) for the purpose of carrying out the employer's business. An employer's premises may also include:

- captive roads (see Item C3-19.00, *Work-Related Travel*); and
- employer-provided facilities (see Item C3-20.00, *Employer-Provided Facilities*).

2. For Employer's Benefit

Did the injury or death occur while the worker was doing something for the benefit of the employer's business? If the worker is in the process of doing something for the benefit of the business generally or the employer personally, this factor favours coverage. If the worker is in the process of doing something solely for the worker's own benefit, this factor does not favour coverage.

In the case of independent operators and active principals of corporations, it is necessary to distinguish between the activities the independent operators or active principals carry on in furtherance of the business, and personal activities undertaken independent of the business. Only injuries or death occurring while pursuing the former type of activity may be considered to arise out of and in the course of the employment.

3. Instructions From the Employer

Did the injury or death occur in the course of action taken in response to instructions from the employer? For example, did the employer direct or request that the worker participate in an activity as part of the employment? The clearer the direction, the more this factor favours coverage.

The more tenuous the direction, the less this factor favours coverage: for example, if the worker was doing something on a purely voluntary basis, or the employer simply sanctioned participation without directing or requesting it.

4. Equipment Supplied by the Employer

Did the injury or death occur while the worker was using equipment or materials supplied by the employer? If so, this factor favours coverage.

5. Receipt of Payment or Other Consideration from the Employer

Did the injury or death occur while the worker was in the process of receiving payment or other consideration from the employer? If so, this factor favours coverage.

This includes cases where the worker is required to report to the employer's premises or office in order to pick up a paycheque, whether or not this is during a regular shift.

6. During a Time Period for which the Worker was Being Paid or Receiving Other Consideration

Did the injury or death occur during a time period in which the worker was paid a salary or other consideration, or did the injury or death occur during paid working hours? If so, this is a factor that favours coverage.

7. Activity of the Employer, a Fellow Employee or the Worker

Was the injury or death caused by an activity of the employer or of a fellow employee? If so, this factor favours coverage.

Was the injury or death caused by a non-work related activity of the worker? The more tenuously the worker's activity is related to the employment, the less this factor favours coverage.

Consideration in either case is given to whether the activity of the employer, fellow employee or worker was employment-related or unauthorized (see Item C3-17.00, *Deviations from Employment*).

8. Part of Job

Did the injury or death occur while the worker was performing activities that were part of the worker's job? If so, this factor favours coverage.

9. Supervision

Did the injury or death occur while the worker was being supervised by the employer or a representative of the employer having supervisory authority? If so, this factor favours coverage.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 5(1) of the *Act.*
CROSS REFERENCES:	Item C3-17.00, *Deviations from Employment;* Item C3-18.00, *Personal Acts;* Item C3-19.00, *Work-Related Travel;* Item C3-20.00, *Employer-Provided Facilities.*
HISTORY:	February 1, 2020 – Amendments to provide guidance on the legal issues of standard of proof, evidence, and causation. July 1, 2010 – This policy includes content from former policy items #14.00**,** #21.30 and #21.40 of the *Rehabilitation Services & Claims Manual*, Volume II. June 1, 2004 **–** Former policy item #14.00 was amended to include "whether the injury occurred while the worker was performing activities that were part of the regular job duties" and "whether the injury occurred while the worker was being supervised by the employer" as factors to be considered. The amendment applied to all injuries on or after June 1, 2004 and was undertaken as part of the review of former policy item #20.20.
APPLICATION:	Applies to all decisions made on or after February 1, 2020, respecting claims for injuries occurring on or after July 1, 2010.

RE: Accident – Section 5(4) Presumption **ITEM: C3-14.20**

BACKGROUND

1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation for personal injury caused by accident.

2. The Act

Section 1:

> "accident" includes a wilful and intentional act, not being the act of the worker, and also includes a fortuitous event occasioned by a physical or natural cause;

Section 5(4):

> In cases where the injury is caused by accident, where the accident arose out of the employment, unless the contrary is shown, it must be presumed that it occurred in the course of the employment; and where the accident occurred in the course of the employment, unless the contrary is shown, it must be presumed that it arose out of the employment.

POLICY

The definition of "accident" provided in the *Act* is not an exclusive definition of the term; the word has been interpreted in its normal meaning of a traumatic incident. It has not, for example, been extended to cover injuries resulting from a routine work action or a series of such actions occurring over a period of time.

Section 5(4) of the *Act* creates the following presumption for injuries resulting from an accident:

- Where an injury is caused by an accident that arose out of the employment, unless the contrary is shown, it is presumed that the accident occurred in the course of the employment.

- Where an injury is caused by an accident that occurred in the course of the employment, unless the contrary is shown, it is presumed that the accident arose out of the employment.

Where an injury occurs at work as a result of any traumatic experience or external cause, it is usually from an accident to which the presumption in section 5(4) applies. For injuries resulting from an accident, evidence is only needed to establish either that the injury arose out of the employment or that it arose in the course of the employment. The other component of the test is presumed, unless there is evidence to the contrary.

The standard of proof to be applied in determining whether the presumption has been rebutted is proof on a balance of probabilities. Balance of probabilities means "more likely than not." The presumption is rebutted if opposing evidence shows that the contrary conclusion is the more likely. The presumption is not rebutted because there is a lack of evidence to support an employment connection. Every reasonable effort is made to obtain all available evidence.

Where there is no "accident", the presumption in section 5(4) does not apply.

The broad interpretation given to the term "accident" for the purpose of section 4(1) of the *Government Employees Compensation Act*, R.S.C. 1985, c. G-5 does not apply to section 5(4) of the *Workers Compensation Act*.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 5(4) of the *Act.*
CROSS REFERENCES:	Item C3-12.10, *Federal Government Employees.*
HISTORY:	February 1, 2020 – Amendments to provide guidance on legal issues of standard of proof, evidence, and causation. July 1, 2010 – This policy replaces former policy item #14.10 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	Applies to all decisions made on or after February 1, 2020, respecting claims for injuries occurring on or after July 1, 2010.

In addition to medical evidence, the Board considers the description of the activities or events leading up to the injury provided by the worker, any witnesses and the employer.

Where the evidence does not support a finding that the motion had causative significance in producing the injury, it is not compensable. A speculative possibility that the motion contributed to the injury is not enough.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 5(1) of the *Act.*
CROSS REFERENCES:	Item C3-14.00, *Arising Out of and In the Course of the Employment;* Item C3-18.00, *Personal Acts*.
HISTORY:	February 1, 2020 – Amendments to provide guidance on the legal issues of standard of proof and evidence. July 1, 2010 – This policy replaces former policy item #15.20, *Injuries Following Motions at Work* of the *Rehabilitation Services & Claims Manual*, Volume II, and revises entitlement test requirements of "sufficient employment connection" and "causative significance" for injuries involving natural body motions at work.
APPLICATION:	Applies to all decisions made on or after February 1, 2020, respecting claims for injuries occurring on or after July 1, 2010.

RE: Pre-Existing Conditions or Diseases **ITEM: C3-16.00**

BACKGROUND

1. Explanatory Notes

This policy provides guidance on distinguishing between injuries or death that arise out of and in the course of the employment, and injuries or death that result from pre-existing conditions or diseases.

2. The Act

Section 5(1):

> Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part must be paid by the Board out of the accident fund.

POLICY

A. General

It is necessary to distinguish between injuries or death resulting from employment (which are compensable), and injuries or death resulting from pre-existing conditions or diseases (which are not compensable).

An injury or death is not compensable simply because it happened at work. It is also necessary to determine that it arose out of the employment. This means that there must have been something in the employment activity or situation that had causative significance in producing the injury or death.

A pre-existing condition or disease may be aggravated by an employment-related incident or trauma, or series of incidents or traumas. In such cases, the worker's resulting injury or death may be compensable.

In adjudicating these types of claims, the Board considers:

- the nature and extent of the pre-existing condition or disease;
- the nature and extent of the employment activity; and

- the relationship between the pre-existing condition or disease and the employment activity, including the degree to which the employment activity may have affected the pre-existing condition or disease.

Evidence that the pre-existing condition or disease has been accelerated, activated or advanced more quickly than would have occurred in the absence of the employment activity, may be confirmation that the aggravation resulted from the employment activity.

B. Pre-Existing Deteriorating Condition or Disease

If a worker's pre-existing condition or disease is a *deteriorating* condition or disease, the evidence is examined to determine whether or not, at the time of the injury or death, the pre-existing deteriorating condition or disease was at a critical point at which it was likely to result in a manifest disability.

If the injury or death is one that the worker would have sustained whether at work, at home, or elsewhere, regardless of the employment activity, then the employment was not of causative significance, and the injury or death is considered to have resulted from the pre-existing deteriorating condition or disease and is not compensable.

On the other hand, if the injury or death is one that the worker would not have sustained for months or years, but for the exceptional strain or circumstance of the employment activity, then the employment is of causative significance, and the injury or death may be compensable.

An example may help to illustrate the distinction. If the evidence shows that a worker has a pre-existing deteriorating heart condition, which could result in a heart attack at any time, an employment activity such as walking up one flight of stairs to his or her office would not mean that the employment activity was of causative significance in a resulting heart attack. On the other hand, if the worker was at the bottom-end of moving a 300-pound load up a flight of stairs, and the load slipped, causing the worker fright and strain, that strain or circumstance may mean that the employment activity was of causative significance and the resulting heart attack arose out of and in the course of the employment.

In all cases, the medical and factual evidence is considered together, in order to determine the causative significance of the pre-existing deteriorating condition or disease, and the employment activity or situation, in the resulting injury or death.

C. Pre-Existing Non-Deteriorating Condition or Disease

If a worker's pre-existing condition or disease is not a deteriorating condition or disease, it may be said that an event at work "triggered" the pre-existing condition or disease resulting in an injury or death. This does not mean, however, that the resulting injury or disease is compensable. The circumstances, including the condition of the worker, are considered to determine whether the employment was of causative significance.

For example, a worker's injury resulting from falling to the floor during an epileptic seizure would likely occur regardless of the worker's employment activity. The employment activity would therefore be considered trivial or insignificant and the injury not compensable.

On the other hand, if the employment activity or situation results in injuries or death beyond those that might have flowed from the pre-existing condition or disease, the additional injuries or death resulting from the employment activity or situation may be compensable. For example, the causative significance of a worker's employment activity would be much more than trivial or insignificant where a worker's injury results from falling off a twelve foot scaffold during an epileptic seizure. Here, the employment situation results in injuries beyond those that might have flowed from the pre-existing condition, and though the epileptic seizure itself is not a compensable injury, the injuries resulting from falling off the scaffold may be compensable, due to the significance of the employment situation.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 5(1) of the *Act.*
CROSS REFERENCES:	Policy item #26.55, *Aggravation of a Disease;* Policy item #114.40, *Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability;* Policy item #114.41, *Relationship Between Sections 5(5) and 39(1)(e);* Policy item #115.30, *Experience Rating Cost Exclusions.*
HISTORY:	February 1, 2020 – Amendment to provide guidance on the legal issues of standard of proof, evidence, and causation. July 1, 2010 **–** This policy replaces former policy items #15.00, #15.10 and #15.30 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	Applies to all decisions made on or after February 1, 2020, respecting claims for injuries occurring on or after July 1, 2010.

RE: Personal Acts **ITEM: C3-18.00**

BACKGROUND

1. Explanatory Notes

This policy provides guidance for differentiating between a worker's employment functions and a worker's personal actions, when determining whether a personal injury or death arises out of and in the course of the employment.

2. The Act

Section 5(1):

> Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part must be paid by the Board out of the accident fund.

Section 99(3):

> If the Board is making a decision respecting the compensation or rehabilitation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the Board must resolve that issue in a manner that favours the worker.

POLICY

A worker's injury or death is compensable if it arises out of and in the course of the employment, as described in Item C3-14.00, *Arising Out of and In the Course of the Employment*. However, there is a broad intersection and overlap between employment and personal affairs. An incidental intrusion of personal activity into the process of employment is not a bar to compensation. Conversely, an incidental intrusion of some aspect of employment into the personal life of a worker at the moment of an injury or death does not automatically entitle the worker to compensation.

In the marginal cases, it is impossible to do better than weigh the employment features of the situation against the personal features to reach a conclusion, which can never be devoid of intuitive judgment, as to whether the test of employment connection has been met. For decisions respecting the compensation or rehabilitation of a worker, the standard of proof under section 99(3) of the *Act* is "at least as likely as not."

Where the common practice of an employer or an industry permits some latitude to workers to attend to matters of personal comfort or convenience in the course of employment, compensation for injuries or death occurring at those moments is not denied simply on the ground that the worker is not in the course of productive work activity at the crucial moment. This is within the scope of the established doctrine relating to acts which, though not in themselves productive, are nevertheless a normal incident of employment.

A. Lunch, Coffee and Other Breaks

A worker may be considered to be in the course of the employment not only when doing the work the worker is employed to do, but also while engaged in other incidental activities. For example, a worker does not cease to be in the course of the employment while using washroom facilities or having a lunch or coffee break on the employer's premises. An injury or death that occurs in these situations may not, however, also arise out of the employment. While both employment and non-employment factors may contribute to the injury or death, the causative significance of the employment must be more than trivial for the Board to find that the injury or death arose out of the employment.

B. Acts for Personal Benefit of Principals of Business

An injury or death may be considered to arise out of and in the course of the employment if it occurs while a worker is in the process of doing something for the benefit of the employer's business generally, or for the employer personally.

In the case of independent operators with personal optional protection and active principals of small corporations, it is necessary to distinguish between the activities the independent operators or active principals carry on in furtherance of the business for which they (or the company) are covered by the *Act*, and independent, personal or business activities that are not so covered. Only injuries or death occurring while pursuing the former type of activity may be considered to arise out of and in the course of the employment.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 5(1) of the *Act.*
CROSS REFERENCES:	Item C3-20.00, *Employer-Provided Facilities* (C. Lunchrooms).
HISTORY:	February 1, 2020 – Amendment to provide guidance on the legal issue of standard of proof. July 1, 2010 – This policy resulted from the consolidation of former policy items #21.00, #21.10, and #21.40 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	Applies to all decisions made on or after February 1, 2020, respecting claims for injuries occurring on or after July 1, 2010.

RE: Extra-Employment Activities **ITEM: C3-21.00**

BACKGROUND

1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation for personal injury or death when engaged in extra-employment activities.

2. The Act

Section 1:

> "worker" includes
>
> (b) a person who is a learner, although not under a contract of service or apprenticeship, who becomes subject to the hazards of an industry within the scope of Part 1 for the purpose of undergoing training or probationary work specified or stipulated by the employer as a preliminary to employment;

Section 3(6):

> Where the Minister of Education, Skills and Training and the Minister of Labour approve a vocational or training program, and a school or other location as a place of that vocational or training program, the Board may, at the request of either minister, deem any person or class of persons enrolled in the program to be workers of the Crown in right of the Province and compensation under this *Act* is then payable out of the accident fund for injuries arising out of and in the course of training for those workers, but where the injury resulted in a period of temporary disability with no loss of earnings,
>
> (a) a health care benefit only is payable except as provided in paragraph (b); and
>
> (b) where training allowances paid by Canada or the Province are suspended, the Board may, for the period it considers advisable, pay compensation in the amount of the training allowance.

Section 5(1):

> Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part must be paid by the Board out of the accident fund.

Section 99(3):

> If the Board is making a decision respecting the compensation or rehabilitation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the Board must resolve that issue in a manner that favours the worker.

POLICY

Activities which people undertake outside the course of their employment are for their own benefit, and injuries or death occurring in the course of these activities are generally not compensable. However, some extra-employment activities may be sufficiently connected to the worker's employment as to be considered part of that employment.

In assessing these cases, the general factors listed under Item C3-14.00, *Arising Out of and In the Course of the Employment* are considered. Item C3-14.00 is the principal policy that provides guidance in deciding whether or not an injury or death arises out of and in the course of the employment. All relevant factors must be considered and no single factor is determinative. Relevant factors not listed in policy may also be considered. The evidence is then weighed to determine whether the injury or death arose out of and in the course of the employment. For decisions respecting the compensation or rehabilitation of a worker, the standard of proof applied under section 99(3) of the *Act* is "at least as likely as not."

A. Participation in Competitions

Subject to the general factors listed under Item C3-14.00, an injury or death sustained by a worker while participating in, or while traveling to or from, an employment-related competition (such as a first aid, mine rescue, or fire-fighting competition), is considered to arise out of and in the course of the employment if all three of the following conditions are satisfied.

1. The type of skill or knowledge that the competition is designed to test or promote is connected to the worker's employment. It is not necessary that

- was paid for by the employer; or
- was considered by the employer to be part of the worker's job.

No single factor is determinative. In marginal cases, it is impossible to do better than weigh the employment features of the education or training against the personal features to reach a conclusion as to whether the test of employment connection has been met.

ii. Education as Employment

In addition, there are three specific situations where the educational or training course is considered to be the employment, and the question to be determined is whether the injury or death arose out of and in the course of the education or training itself:

- Board-recognized vocational or training programs under section 3(6) of the *Act*.
- Vocational rehabilitation programs undertaken as part of a Board-approved rehabilitation plan (see Items C11-88.50, *Vocational Rehabilitation – Formal Training* and C3-22.00, *Compensable Consequences*).
- Pre-employment training or probationary work undertaken by a person not under contract of service or apprenticeship that was specified or stipulated by an employer as a preliminary to employment and which subjects the person to the hazards of an industry within the scope of Part 1 of the *Act*.

D. Fundraising, Charitable or Other Similar Activities

The organization of, or participation in, fundraising or charitable activities is normally not considered to be part of a worker's employment under the *Act*. There are, however, certain cases when such activities may be considered sufficiently connected to the employment as to be considered part of the employment.

The factors listed in Item C3-14.00 are considered in determining whether coverage should be provided for an injury or death sustained during a fundraising or charitable activity. All relevant factors must be considered and no single factor is determinative. Relevant factors not listed in policy may also be considered.

The above guidance does not apply to persons who are employees of charitable or other like agencies which are covered under the *Act*, or to persons from other companies who are seconded for a period of time to work with such agencies and who are considered workers of those agencies under the *Act*.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 5(1) of the *Act*.
CROSS REFERENCES:	Policy item #7.10, *Members of Fire Brigades;* Item C3-12.20, *Commencement and Termination of the Employment Relationship;* Item C3-14.00, *Arising Out of and In the Course of the Employment;* Item C11-88.50, *Vocational Rehabilitation – Formal Training;* Policy item #115.30, *Experience Rating Cost Exclusions.*
HISTORY:	February 1, 2020 – Amendments to provide guidance on the legal issue of standard of proof. July 1, 2010 – This policy resulted from the consolidation of former policy items #20.00, #20.10, #20.20, #20.30 and #20.50 of the *Rehabilitation Services & Claims Manual*, Volume II. June 1, 2004 – Former policy item #20.20 was amended to clarify each of the factors listed in policy and to indicate which factors favour coverage. As part of the review of former policy item #20.20, former policy item #20.50 was also amended to clarify that fundraising or charitable activities are not normally considered to be part of a worker's employment, though in certain circumstances such activities may be covered; cross-reference former policy item #14.00; and delete discussion of the section 5(1) test. Changes to both former policies applied to all injuries on or after June 1, 2004.
APPLICATION:	Applies to all decisions made on or after February 1, 2020, respecting claims for injuries occurring on or after July 1, 2010.

RE: Compensable Consequences – Pain and Chronic Pain **ITEM: C3-22.20**

BACKGROUND

1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation for pain or chronic pain as a compensable consequence of a worker's personal injury.

2. The Act

Section 5(1):

> Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part must be paid by the Board out of the accident fund.

POLICY

A worker's pain symptoms may be accepted as compensable where the evidence indicates that the pain results as a consequence of an employment-related 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.

A. 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:

- 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.

- Subacute pain is pain that an injured worker continues to experience four to six weeks after a traumatic injury or disease.

- 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 Board. 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 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 compensable injury.

B. 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.

i. 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. The Board 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 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 concludes that they will assist in a worker's return to work.

ii. Multidisciplinary Treatment and Rehabilitation

In certain cases, the Board 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 concludes that they will assist in the worker's early return to work. The Board may also consider these interventions where they will assist in preventing the onset of chronic pain.

In making this determination, the Board 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.

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 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.

iii. Early Intervention – Chronic Pain

In all cases where the Board 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.

C. 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 to become permanent, entitlement to permanent partial disability benefits may be considered under section 23 of the *Act*.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 5(1) of the *Act*.
CROSS REFERENCES:	Item C3-14.00, *Arising Out of and In the Course of the Employment;* Item C3-22.00, *Compensable Consequences;* Item C3-22.30, *Compensable Consequences – Psychological Impairment;* Chapter 5 – Wage-Loss Benefits; Chapter 6 – Permanent Disability Awards; Policy item #39.02, *Chronic Pain;* Chapter 11 – Vocational Rehabilitation; Item C11-88.00, *Vocational Rehabilitation Nature and Extent of Programs and Services.*
HISTORY:	February 1, 2020 – Amendments to provide guidance on the legal issues of standard of proof, evidence, and causation. July 1, 2010 – This policy replaces former policy item #22.35 of the *Rehabilitation Services & Claims Manual*, Volume II. Former policy item #22.35 was created January 1, 2003 to set out the scope of coverage in cases where pain is accepted as compensable; applied to all new claims received and all active claims awaiting an initial adjudication of chronic pain on a claim.
APPLICATION:	Applies to all decisions made on or after February 1, 2020, respecting claims for injuries occurring on or after July 1, 2010.

RE: Compensable Consequences – Certain Diseases and Conditions **ITEM: C3-22.40**

BACKGROUND

1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation for certain specific diseases or conditions that may be considered a compensable consequence of a worker's personal injury.

2. The Act

Section 5(1):

> Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part must be paid by the Board out of the accident fund.

POLICY

Once it is established that an injury arose out of and in the course of the employment, a disease or condition beyond the immediate physical damage caused by the compensable injury may also be considered to be a consequence of the compensable injury. If the compensable injury was of causative significance in the subsequent disease or condition, then the subsequent disease or condition is sufficiently connected to the compensable injury as to be considered to arise out of and in the course of the employment, and is therefore also compensable.

A. Suicide

In a case of suicide, death benefits are payable if it is established that the suicide resulted from a compensable injury.

If the employment-related compensable injury was of causative significance in the suicide, then the suicide is sufficiently connected to the employment-related injury as to also be compensable. Consideration is given to the worker's mental health history and any evidence of causal connections between the employment-related injury and the suicide.

B. Cancer

In claims where trauma is alleged to be the cause of cancer, the following five criteria should be satisfied before a cancer can be considered to be traumatically induced.

1. Authenticity and adequacy of trauma.
2. Previous integrity of the wounded part.
3. Origin of tumour at exact point of injury.
4. Reasonable time limit between injury and time of appearance of tumour.
5. Positive diagnosis of the presence and nature of the tumour.

Reviews of the medical literature have been completed to ascertain whether or not there is new evidence to associate trauma as a causal agent in cancer.

Except in the case of skin cancer, there is little firm evidence to associate trauma with cancer as an etiologic agent. Although there is general recognition of what has been called "traumatic determinism", i.e. that an injury may call the person's attention to a pre-existing tumour, there is no known causal relationship between trauma and bone cancer.

C. Alcoholism and Drug Dependency Problems

Where it is claimed that an alcohol or drug dependency problem was caused or made worse by a compensable injury, the compensability of the alcohol or drug dependency problem is thoroughly investigated in the same manner as followed in investigating the relationship of other problems to an injury. Because of the psychological nature of alcohol and drug dependency problems, this investigation would normally include a reference to a Board Psychologist, though the decision on acceptability will be made by the Board officer adjudicating the claim. Any pre-existing alcohol or drug dependency problems are treated in the same way as any other pre-existing condition. The Board determines whether the worker's alcohol or drug dependency problem is a continuation of a pre-existing alcohol or drug dependency problem, or has resulted from or been made worse by the compensable injury.

If the Board accepts one alcohol or drug dependency problem as a compensable consequence of an injury, it does not mean the Board will accept all such problems. Any further or subsequent alcohol or drug dependency problem is investigated, following the procedure set out above. The Board determines whether the further alcohol or drug dependency problem is related to the compensable injury and the previously accepted alcohol or drug dependency problem, or to some pre-existing condition or other cause.

Policy regarding the prescription of narcotics and other drugs of addiction is set out in Item C10-80.00, *Potentially Addictive Drugs*.

Compensation for alcoholism as an occupational disease is addressed in policy item #32.15, *Alcoholism*.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 5(1) of the *Act*.
CROSS REFERENCES:	Item C3-14.00, *Arising Out of and In the Course of the Employment;* Item C3-16.00, *Pre-Existing Conditions or Diseases;* Item C3-22.00, *Compensable Consequences;* Item C3-22.30, *Compensable Consequences – Psychological Impairment;* Policy item #32.15, *Alcoholism;* Item C10-80.00, *Potentially Addictive Drugs.*
HISTORY:	February 1, 2020 – Amendments to provide guidance on the legal issues of standard of proof, evidence, and causation. January 1, 2015 – Consequential amendments arising from changes to Chapter 10, *Medical Assistance, Rehabilitation Services and Claims Manual.* January 1, 2014 – This policy was revised to delete section B, Multiple Sclerosis. July 1, 2010 – This policy resulted from the consolidation of former policy items #22.22, #22.30, #22.31, #22.32, and #22.34 of the *Rehabilitation Services & Claims Manual*, Volume II. The criteria to be met before considering whether a cancer is traumatically induced set out in former policy item #22.32 was derived from J. Ewing's "Modern Attitude Toward Traumatic Cancer", *Archives of Pathology* 19:690-728, 1935. The statement that there is no causal relationship between bone cancer and trauma is based on the following four studies:

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 Clinic Proceedings 49:157-163, March 1974; and
Pritchard et al.; *The Etiology of Osteosarcoma,* Clinical Orthopedics and Related Research, 111:14-22, September 1975

APPLICATION: Applies to all decisions made on or after February 1, 2020, respecting claims for injuries occurring on or after January 1, 2014.

EFFECTIVE DATE:	March 1, 2015
AUTHORITY:	Section 1 of the *Act.*
CROSS REFERENCES:	Policy item #26.00, *The Designation or Recognition of an Occupational Disease*; Policy item #26.01, *Recognition by Inclusion in Schedule B*; Policy item #26.02, *Recognition under Section 6(4.2)*.
HISTORY:	Language added stating that an occupational disease may be recognized by regulation of general application. Change also made to add flexibility for another WorkSafeBC officer, such as a Case Manager, to communicate with a worker when a reported condition might not be recognized as an occupational disease. Minor changes to add policy item titles. June 1, 2009 – Deleted references to Board officers. October 1, 2007 – Revised to delete references to memos and memorandums. March 3, 2003 – consequential changes as to references to review.
APPLICATION:	This item applies to all decisions made on or after March 1, 2015.

#26.10 Suffers from an Occupational Disease

Part of the first requirement for compensability is that the worker suffers from, or in the case of a deceased worker the death was caused by, an occupational disease.

For decisions respecting the compensation or rehabilitation of a worker, the standard of proof under section 99(3) of the *Act* is "at least as likely as not." This standard is different than medical or scientific standards of certainty. Confirming the diagnosis of many occupational diseases may be difficult. This is particularly so for poisoning by some of the metals and compounds listed in Schedule B, the symptoms of which may be similar to the symptoms caused by common complaints that produce fatigue, nausea, headache and the like. Evidence that an occupational disease has been diagnosed is relevant and will generally be given significant weight by the Board, but it is not a requirement under section 6(1) of the *Act*. The question for the Board is whether it is "at least as likely as not" that the worker suffers from, or the deceased worker's death was caused by, an occupational disease.

In one Board decision, a worker was advised by the attending physician that he was suffering from lead poisoning and should temporarily withdraw from work. The Board concurred with that advice. Laboratory testing done one month later led to a conclusion that initial tests had been wrong and that the worker never did have lead poisoning. The Board concluded that in these circumstances, where the worker acted reasonably in reliance on medical advice that the Board agreed with, the merits and justice of the claim warranted a conclusion that the worker was suffering from an occupational disease at the time in question even though in retrospect this was proven not to be the case. (2) The cost of compensation paid on a claim of this type is excluded from the employer's experience rating (see policy item #113.10).

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 6(1) of the *Act*.
HISTORY:	February 1, 2020 – Amendments to provide guidance regarding the legal issues of standard of proof and evidence.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#26.20 Establishing Work Causation

The fundamental requirement for a disease to be compensable under section 6(1) of the *Act* is that the disease suffered by the worker is "due to the nature of any employment in which the worker was employed whether under one or more employments".

There are two approaches to establishing work causation: presumptions under the *Act* and non-scheduled recognition.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 6(1) of the *Act.*
CROSS REFERENCES:	Policy item #26.21, *Schedule B Presumption*; Policy item #26.22, *Additional Presumptions in the Workers Compensation Act*; Policy item #26.23, *Non-Scheduled Recognition and Standard of Proof*.
HISTORY:	February 1, 2020 – Amend policy to remove "and onus of proof." May 1, 2017 – Update policy to identify the two approaches to establishing work causation.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#26.21 Schedule B Presumption

Section 6(3) provides:

> If the worker at or immediately before the date of the disablement was employed in a process or industry mentioned in the second column of Schedule B, and the disease contracted is the disease in the first column of the schedule set opposite to the description of the process, the disease is deemed to have been due to the nature of that employment unless the contrary is proved

The primary significance of Schedule B is with its use as a means of establishing work causation.

The fundamental purpose of Schedule B is to avoid the repeated effort of producing and analyzing medical and other evidence of work-relatedness for a disease where research has caused the Board to conclude that such disease is specific to a particular process, agent or condition of employment (see policy item #26.01). Once included in Schedule B, it is presumed in individual cases that fit the disease and process/industry description that the cause was work-related. A claim covered by Schedule B can be accepted even though no specific evidence of work relationship is produced. A review of the available

medical and scientific evidence would establish a likely relationship between the disease and the employment. The listing in the Schedule avoids the effort of producing the evidence in every case. Where the research does not clearly relate the disease to particular employments, the disease is not listed in Schedule B and the issue of work-relatedness must be determined on a case-by-case basis (see policy item #26.23).

If at the time a worker becomes disabled by a disease listed in Schedule B, or if immediately before such date, such worker was employed in the process or industry described in the second column of the Schedule opposite to such disease, the worker is entitled to a presumption that the disease was caused by their employment, "unless the contrary is proved". This presumption applies whether the disease manifests itself while the worker is at work, at home, while away on holidays, or elsewhere. The words "immediately before" used in section 6(3) are intended to deal with those situations where someone has been employed in the process or industry described in the Schedule, and has left that employment a very short time prior to the onset of the disease.

If a worker becomes disabled by a disease listed in Schedule B but at the relevant time had not been employed in the process or industry described in the Schedule, the claim may still be an acceptable one, however no presumption in favour of work-relatedness would apply. In this event establishing work causation follows the approach covered in policy item #26.23.

Inclusion of the words "unless the contrary is proved" in section 6(3) means that the presumption is rebuttable. Even though the decision-maker need not consider whether working in the described process or industry is likely to have played a causative role in giving rise to the disease, they must still consider whether there is evidence which rebuts or refutes the presumption of work-relatedness.

The standard of proof to be applied in determining whether the presumption has been rebutted is proof on a balance of probabilities. Balance of probabilities means "more likely than not." If the evidence is more heavily weighted in favour of a conclusion that it was something other than the employment that caused the disease, then the contrary will be considered to have been proved and the presumption is rebutted. The presumption is not rebutted because there is a lack of evidence to support work causation. The gathering and weighing of evidence generally is covered in policy items #97.00 through #97.70.

Difficulties may arise in determining whether the worker was employed in the process or industry described in the second column. This often arises because of the use of such words as "excessive" or "prolonged". While the Board would like to define more precisely the amount and duration of exposure required instead of using these words, it is usually not possible.

The exact amounts will often vary according to the particular circumstances of the work place and the worker, or may not be quantified with sufficient precision by the available research. However, while such words are of uncertain meaning, there is valid reason for inserting them. Individual judgment must be exercised in each case to determine their meaning, having regard to the medical and other evidence available as to what is a reasonable amount or duration of exposure.

EFFECTIVE DATE: February 1, 2020
AUTHORITY: Section 6(3) of the *Act*.
HISTORY: February 1, 2020 – Amendments made to provide guidance regarding the legal issues of standard of proof, evidence, and causation.
March 1, 2019 – Consequential amendment made on March 1, 2019 to reflect addition of policy item #97.70, *Surveillance.*
May 1, 2017 – Consequential amendment made on May 1, 2017 to reflect renumbering of policy item #26.23 (formerly #26.22).
June 1, 2004 – Statements adopting a broad interpretation of the phrase "immediately before" have been deleted.
July 16, 2002 – Housekeeping changes.
APPLICATION: Applies to all decisions made on or after February 1, 2020.

#26.22 Additional Presumptions in the Workers Compensation Act

The *Act* provides the following additional presumptions:

- Firefighters' occupational disease or personal injury presumption (see section 6.1 of the *Act)*;
- Communicable disease presumption (see section 6.2 of the *Act)*; and
- Mental disorder presumption (see section 5.1 of the *Act*).

EFFECTIVE DATE: July 23, 2018
HISTORY: Consequential amendments arising from the Bill 9 amendments to section 5.1 of the *Act*, were made effective July 23, 2018.
May 1, 2017 – Adding to policy a reference to the firefighters' presumption and communicable disease presumption provided in the *Act*.
APPLICATION: Applies on or after July 23, 2018

#26.23 Non-Scheduled Recognition and Standard of Proof

In some cases a worker may suffer an occupational disease not listed in Schedule B. In other cases a worker may suffer from an occupational disease listed in Schedule B but was not employed in the process or industry described opposite to it in the Schedule. In some cases a worker may suffer a disease not

previously designated or recognized by the Board as an occupational disease. Here, the decision on whether the disease is due to the nature of any employment in which the worker was employed, is determined on the merits and justice of the claim without the benefit of any presumption. The same is true if for any other reason the requirements of section 6(3) are not met.

The occupational disease is due to the nature of the worker's employment if the employment was of causative significance in producing the disease. Causative significance means more than a trivial or insignificant aspect.

The Board will conduct a detailed investigation of the worker's circumstances including information about the worker, their diagnosed condition, and their workplace activities. The Board is seeking to gather evidence to establish whether the worker's employment was of causative significance in producing the disease. The gathering and weighing of evidence generally is covered in policy items #97.00 through #97.70. The Board gathers the relevant evidence and determines whether it is sufficiently complete and reliable to arrive at a sound conclusion with confidence. If not, the Board considers what other evidence might be obtained, and must take the initiative in seeking further evidence. Although the nature of the evidence to be obtained and the weight to be attached to it is entirely in the hands of the Board, to be sufficiently complete the Board should obtain evidence from both the worker and the employer, particularly if the Board is concerned about the accuracy of some of the evidence obtained.

Since workers' compensation in British Columbia operates on an inquiry basis rather than on an adversarial basis, there is no onus on the worker to prove his or her case. All that is needed is for the worker to describe his or her personal experience of the disease and the reasons why they suspect the disease has an occupational basis. It is then the responsibility of the Board to research the available scientific literature and carry out any other investigations into the origin of the worker's condition which may be necessary. There is nothing to prevent the worker, their representative, or physician from conducting their own research and investigations, and indeed, this may be helpful to the Board. However, the worker will not be prejudiced by his or her own failure or inability to find the evidence to support the claim. Information resulting from research and investigations conducted by the employer may also be helpful to the Board.

As stated in policy item #97.10, a worker is also assisted in establishing a relationship between the disease and the work by section 99 of the *Act* that provides:

> (1) The Board may consider all questions of fact and law arising in a case, but the Board is not bound by legal precedent.
> (2) The Board must make its decision based upon the merits and justice of the case, but in so doing the Board must apply a policy of the board of directors that is applicable in that case.

(3) If the Board is making a decision respecting the compensation or rehabilitation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the Board must resolve that issue in a manner that favours the worker.

For decisions respecting the compensation or rehabilitation of a worker, the standard of proof under section 99(3) of the *Act* is "at least as likely as not." If the evidence supporting different findings on an issue is evenly weighted, the issue will be resolved in favour of the worker.

This standard of proof is different than medical or scientific standards of certainty. Therefore, the presence or absence of expert evidence supporting or opposing a causal link is relevant and will generally be given weight by the Board, but it is not determinative of causation; causation can be inferred from other evidence. In every case, the Board decides whether the evidence supports a finding of causation based on a weighing of the evidence.

If the evidence before the Board does not support a finding that the disease is due to the nature of the worker's employment, the Board's only possible decision is to deny the claim.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 6(1) of the *Act*.
HISTORY:	February 1, 2020 – Amendments to provide guidance regarding the legal issues of standard of proof, evidence, and causation. March 1, 2019 – Consequential amendment made on March 1, 2019 to reflect addition of policy item #97.70, *Surveillance.* May 1, 2017 – Renumbered from #26.22. June 1, 2009 – Delete references to Board officers. March 3, 2003 – New wording of section 99**.**
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#26.30 Disabled from Earning Full Wages at Work

No compensation other than health care benefits are payable to a worker who suffers from an occupational disease (with the exception of silicosis, asbestosis, or pneumoconiosis and claims for hearing loss to which section 7 of the *Act* apply) unless the worker "is thereby disabled from earning full wages at the work at which the worker was employed". (3) No compensation is payable in respect of a deceased worker unless his or her death was caused by an occupational disease (also see section 6(11) of the *Act*).

Health care benefits may be paid to a worker who suffers from an occupational disease even though the worker is not thereby disabled from earning full wages at the work at which he or she was employed.

There is no definition of "disability" in the *Act.* The phrase "disabled from earning full wages at the work at which the worker was employed" refers to the work at which the worker was regularly employed on the date he or she was disabled by the occupational disease. This means that there must be some loss of earnings from such regular employment as a result of the disabling affects of the disease, and not just an impairment of function. For example, disablement for the purposes of section 6(1) may result from:

- an absence from work in order to recover from the disabling affects of the disease;
- an inability to work full hours at such regular employment due to the disabling affects of the disease;
- an absence from work due to a decision of the employer to exclude the worker in order to prevent the infection of others by the disease;
- the need to change jobs due to the disabling affects of the employment.

A worker who must take time off from his or her usual employment to attend medical appointments is not considered disabled by virtue of that fact alone. However, income loss payments may be made to such a worker (see Item C10-83.10).

A change of employment or lay-off from work for the purpose of precluding the onset of a disability does not amount to a disability for this purpose.

For time limits with respect to occupational disease claims see policy item #32.55.

#26.50 Natural Degeneration of the Body

It often happens that disability results from the natural aging process. At times the pace of the process and each aspect of it can be influenced by environmental circumstances and activity. Work, leisure activities, genetic factors, air purity, diet, medical care, personal hygiene, personal relations and psychological make-up are all factors that may influence the pace of many kinds of natural degeneration. Where the degeneration is of a kind that affects the population at large, it is difficult for the Board to attempt a measurement of the significance of each occupation on each kind of degeneration. It is also difficult to determine whether a particular occupation had any significant effect in advancing the pace of degeneration compared with other occupations, or compared with a life of leisure.

Where a degenerative process or condition is of a kind that affects the population at large, it will not be designated or recognized by the Board as an occupational disease unless employment causation can be established.

If a worker is suffering from a kind of bodily deterioration that affects the population at large, it is not compensable simply because of a possibility that work may be one of the range of variables influencing the pace of that degeneration. For the disability to be compensable, the worker's employment must have been of causative significance. The evidence must establish it is "at least as likely as not" that the work activity brought about a disability that would not otherwise have occurred, or that the work activity significantly advanced the development of a disability that would otherwise not have occurred until later.

For example, osteoarthritis in the spine, rheumatoid arthritis, and degenerative disc disease have not been designated or recognized under policy items #26.01, #26.02, or #26.03 as occupational diseases. (4), (5)

EFFECTIVE DATE:	February 1, 2020
HISTORY:	February 1, 2020 – Amendments to provide guidance regarding the legal issues of standard of proof, evidence, and causation.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#26.55 Aggravation of a Disease

Where a worker has a pre-existing disease which is aggravated by work activities to the point where the worker is thereby disabled, and where such pre-existing disease would not have been disabling in the absence of that work activity, the Board will accept that it was the work activity that rendered the disease disabling and pay compensation. Evidence that the pre-existing disease has been significantly accelerated, activated, or advanced more quickly than would have occurred in the absence of the work activity, is confirmation that a compensable aggravation has resulted from the work.

This must be distinguished from the situation where work activities have the effect of drawing to the attention of the worker the existence of the pre-existing disease without significantly affecting the course of such disease. For example, a worker who experiences hand or arm pain due to an arthritis condition affecting that limb will not be entitled to compensation simply because they experience pain in that limb from performing employment activities. Similarly, a worker with a history of intermittent pain and numbness in a hand/wrist due to a pre-existing median nerve entrapment (carpal tunnel syndrome) will not be entitled to compensation just because their work activities also produce the same symptoms. To be compensable as a work-related aggravation of a disease, the evidence must establish that the employment activated or accelerated the pre-existing disease to the point of disability in circumstances where such disability would not have occurred but for the employment.

Where the pre-existing disease was compensable, the Board must decide if the aggravation should be treated as a new claim or as a reopening of an earlier claim.

An aggravation of a pre-existing disease which is attributed to a specific event or trauma, or to a series of specific events or traumas, will be treated as a personal injury and will be adjudicated in accordance with the policies set out in Chapter 3. For example, a worker who injures his or her back while performing a series of awkward lifts at work may suffer an aggravation to an underlying degenerative disc disease, or a worker with subacromial bursitis may strain the shoulder while completing a particular lift.

An aggravation of a pre-existing disease which is not attributed to a specific event or trauma, or to a series of specific events or traumas, will be treated as a disease. For example, a worker with a prior history of carpal tunnel syndrome may aggravate such condition to the point of requiring surgery as a result of several weeks of exposure to vibrating equipment.

Where a compensable aggravation of a pre-existing disease occurs, consideration will be given to relief of costs under section 39(1)(e) of the *Act*. If a permanent disability results, consideration is also given to proportionate entitlement under section 5(5) of the *Act*. (See policy items #114.40, *Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability*, and #114.41, *Relationship Between Sections 5(5) and 39(1)(e)*.)

EFFECTIVE DATE: July 1, 2010
APPLICATION: Applies on or after July 1, 2010

#26.60 Amending Schedule B

Section 6(4.1) of the *Act* provides:

> The Board may, by regulation,
>
> (a) add to or delete from Schedule B a disease that, in the opinion of the Board, is an occupational disease,
>
> (b) add to or delete from Schedule B a process or an industry, and
>
> (c) set terms, conditions and limitations for the purposes of paragraphs (a) and (b).

This provision gives the Board substantial flexibility in its ability to add to or delete from the list of diseases designated or recognized in Schedule B, and to impose whatever terms, conditions or limitations it considers appropriate in doing so.

It has the same flexibility in its ability to add to or delete from the descriptions of process or industry set out in the second column.

Claims for all of the diseases in Schedule B will be considered in respect of such disease even if the worker was not employed in the process or industry described opposite to the disease in the second column of Schedule B, but without the benefit of the presumption set out in section 6(3) of the *Act*. See policy item #26.23.

EFFECTIVE DATE:	May 1, 2017
HISTORY:	May 1, 2017 – Consequential amendment made on May 1, 2017 to reflect renumbering of policy item #26.23 (formerly #26.22).
APPLICATION:	Applies on or after May 1, 2017.

#27.00 ACTIVITY-RELATED SOFT TISSUE DISORDERS ("ASTDS") OF THE LIMBS

1. Definition of ASTD

The terms "cumulative trauma disorder", "repetitive strain injury", "repetitive motion disorder", "occupational overuse syndrome", "occupational cerviobrachial disorder", "hand/arm vibration syndrome", "work-related musculoskeletal disorder", and others, are broad collective terms used to describe a diverse group of soft tissue disorders which may or may not be caused or aggravated by employment activities. Each of these collective terms can be misleading. They may imply the presence of "repetition" or "trauma" or "motion" or "work-relatedness" where in fact the cause of the disorder may be due in whole or in part to other factors that are not work-related.

The common elements of the disorders included in these collective terms are:

- they are related to physical activity; and
- they affect muscles, tendons, and other soft tissues.

The Board uses the term ASTDs to describe this group of disorders of the limbs which may or may not be caused or aggravated by employment activities

2. Personal Injury or Occupational Disease

The following policies deal with the compensability of ASTDs affecting the limbs, and specifically ASTDs that are recognized as occupational diseases in Schedule B (see policy item #26.01, *Recognition by Inclusion in Schedule B*) or by regulation (see policy item #26.03, *Recognition by Regulation of General Application*).

Where an ASTD is attributed to a sudden trauma or an infection due to a penetrating wound, it will be treated as an injury and adjudicated in accordance with the policies in Chapter 3 (see Item C3-12.00, *Personal Injury*). A claim made by a worker diagnosed with an ASTD where no specific trauma or penetrating wound has occurred, will be treated as a disease and adjudicated in accordance with the policies in this chapter.

The Board will adjudicate a claim made by a worker under both section 5 and section 6 of the *Act*, and in accordance with the policies found in Chapter 3 and this chapter, where either:

- there is an unclear ASTD diagnosis and the evidence indicates the condition may be either an injury or a disease; or

- there is a clear ASTD diagnosis but the evidence indicates the condition may be either an injury or a disease.

3. Definitions of Nerve Entrapment and Tendinopathy

The majority of the ASTDs discussed in this section can be classified as nerve entrapments or tendinopathies. A nerve entrapment occurs when nerve function is affected by mechanical anatomical factors that compress the nerve, such as, tight muscles or tendons, lesions, bony irregularities or swelling

Tendinopathy is a generic descriptor of the clinical conditions in and around tendons, characterized by a combination of pain, swelling and impaired functioning. Tendinopathy encompasses tendinitis, which implies an inflammatory tendon condition, and tendinosis, which implies a degenerative tendon condition. The term tendinitis can be misleading because it is often used to describe all painful tendon conditions, even when there is a lack of inflammatory change.

4. Establishing Work Causation

As with other occupational diseases, the Board determines whether a worker's ASTD was caused or aggravated by the worker's employment (see policy item #26.20, Establishing Work Causation). The Board makes its decision based on the merits and justice of the case, but in so doing the Board applies an applicable Board policy.

Where the strength of association between a process or industry and a specific ASTD is strong, it may be included in Schedule B with the benefit of the rebuttable presumption provided for in section 6(3) of the *Act*. For ASTDs that are not included in Schedule B, the Board may assess work causation under section 6(1) of the *Act* based on the circumstances of the individual case, with consideration of risk factors set out in policy, and the current medical/scientific evidence.

When determining whether the worker's employment was of causative significance in causing or aggravating the worker's ASTD, the Board considers:

- the mechanics of the employment activity in question (e.g. is the condition bilateral, while the employment activity to a greater degree required movement of the limb on one side?);

- whether any changes took place in the worker's employment or non-employment activities prior to or at the time of onset of the ASTD;

- whether there is evidence of ASTD onset in those who perform the same type of employment or non-employment activities as the worker;

- the potential combined effect of activities in more than one employment; and

- whether the worker has pre-existing injuries, diseases or other conditions that may be associated with the onset of the ASTD at issue, and the cause of such conditions.

When making the above determination, the Board recognizes that:

- ASTDs may be caused by exposure to employment-related risk factors, but they may also be caused by exposure to non employment-related risk factors that occur as part of everyday life (e.g. while playing recreational sports);

- some cases of an ASTD may be idiopathic (occurring without known cause) where a causal agent cannot be identified;

- some cases of an ASTD may be idiopathic (occurring without known cause) where a causal agent cannot be identified;

- two or more ASTDs may exist simultaneously; a second ASTD may occur as the result of adjusting to, or compensating for, the first;

- some people are more susceptible to the development of ASTDs than others; and

- ASTDs are often caused by exposure to a combination of risk factors, rather than just one risk factor.

5. Risk Factors

Determining whether an ASTD is due to the nature of a worker's employment requires an analysis of risk factors relevant to the causation of ASTDs. The Board considers all relevant risk factors in a particular case.

The presence or absence of some risk factors may suggest work causation, while the presence or absence of others may suggest non work-related causation.

Risk factors may act directly in causing an ASTD or they may act indirectly by creating the conditions that may lead to an ASTD. Risk factors are not equal nor can they be consistently ranked in order of importance. Their relative importance will vary with the circumstances of each claim. Individual judgment is exercised in each case to determine the weight to be given to each risk factor having regard to the available evidence.

When assessing whether a worker's employment was of causative significance in the development of an ASTD, the Board generally considers how the worker interacts with the work environment and the following employment-related risk factors:

- cold temperature: cold may have direct damaging effects on the tissue through vascular constriction and other mechanisms;
- dose: the level of intensity of a risk factor over a specific duration;
- duration: the length of time a worker is exposed to a particular risk factor;
- force: the physical effort a worker must exert to perform a particular movement or activity;
- frequency: the number of repetitions of a complete sequence of tasks or movements of a process occurring per unit of time during a work cycle;
- grip type: the posture of the hand required for a worker to grasp an object to perform a particular movement or activity. Different types of grips require the application of different force levels;
- hand-arm vibration: the vibration that is transmitted from vibrating surfaces of objects such as hand tools, through the hands and arms;
- local contact stresses: the results from physical pressure between body tissues and objects in the work environment such as tools, machinery, and products;
- magnitude: the degree of exposure to a noted risk factor;
- posture: refers to postures that are awkward. Postures are awkward when joints are held at or near the end of range of motion or muscle tension is required to hold the posture without movement;

- repetition: the cyclical use of the same body tissues either as a repeated motion or as a repeated muscular effort without movement. Consideration is given to the:
    - work cycle;
    - work period; and
    - work-recovery (rest) cycle;
- static load: sustain a given level of muscle force/exertion for a duration of time, against gravity or against some other external force;
- task variability: the degree to which the task remains unchanged thus causing loading of the same tissues in the same way;
- unaccustomed activity: tissues not being acclimatized to the activities performed;
- work cycle: an exertion period and a recovery (or smaller exertion) period necessary to complete one sequence of a task, before the sequence is repeated; and
- work-recovery (rest) cycle: the availability and distribution of breaks in a particular activity to allow the tissue to return to a resting state for recovery.

This is not an exhaustive list, and relevant factors not listed in policy may also be considered.

When assessing whether one of the above noted employment-related risk factors caused or contributed to the development of a worker's ASTD, the Board considers:

- the location of the anatomical structure affected (e.g. the elbow);
- the risk factors involved in the worker's employment activities;
- the muscle groups, tendons and joints involved in performing the worker's employment activities; and
- whether there is a biologically plausible connection between the employment activities and the development of the ASTD.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Sections 5, 6(1) and 6(3) of the *Act.*
CROSS REFERENCES:	Item C3-12.00, *Personal Injury;* Policy item #26.01, *Recognition by Inclusion in Schedule B;* Policy item #26.03, *Recognition by Regulation of General Application;* Policy item #26.20, *Establishing Work Causation.*

HISTORY: February 1, 2020 – Amendments include providing direction when adjudicating ASTD claims where the condition may be either an injury or a disease, and further emphasizing the importance of considering all of the relevant ASTD risk factors in a particular case, and for the Board to base its decisions on the merits and justice of the case.
March 15, 2015 – This policy provides guidance on adjudicating ASTDs generally. It incorporates language from former policy items #27.00, *Activity-Related Soft Tissue Disorders of the Limbs,* #27.11, *Bursitis*, #27.12, *Tendinitis and Tenosynovitis*, #27.20, *Tendinitis/Tenosynovitis and Bursitis Claims Where No Presumption Applies,* and #27.40, *Risk Factors*, of the *Rehabilitation Services & Claims Manual*, Volume II. This policy provides guidance on adjudicating ASTDs as either personal injuries or occupational diseases. The definitions of the terms nerve entrapment and tendinopathy are included. Guidance on factors relevant to establishing work causation of ASTDs and risk factors generally are included.

APPLICATION: This item applies to all decisions made on or after February 1, 2020.

#27.10 ASTDs Recognized by Inclusion in Schedule B

The following ASTDs are recognized as occupational diseases by inclusion in Schedule B: hand-wrist tendinopathy (policy item #27.11), shoulder tendinopathy and shoulder bursitis (policy item #27.12), knee bursitis (policy item #27.13), and hand-arm vibration syndrome (policy item #27.14).

The general application of the Schedule B presumption for establishing work causation is discussed in policy item #26.21, *Schedule B Presumption*.

EFFECTIVE DATE: March 1, 2015
AUTHORITY: Section 1 of the *Act* and Schedule B of the *Act.*
CROSS REFERENCES: Policy item #26.01, *Recognition by Inclusion in Schedule B of the Act;*
Policy item #26.21, *Schedule B Presumption;*
Policy item #27.11, *Hand-Wrist Tendinopathy;*
Policy item #27.12, *Shoulder Tendinopathy and Shoulder Bursitis*;
Policy item #27.13, *Knee Bursitis;*
Policy item #27.14, *Hand-Arm Vibration Syndrome.*

HISTORY: Changes made for clarity and to reflect the new numbering of the ASTD policies and terminology.

APPLICATION: This item applies to all decisions made on or after March 1, 2015.

#27.11 Hand-Wrist Tendinopathy

Schedule B lists “hand-wrist tendinopathy” as an occupational disease (Schedule B item 13(a)). Schedule B provides a rebuttable presumption that hand-wrist tendinopathy is due to the nature of employment where a worker was employed in a process or industry:

> Where there is use of the affected tendon(s) to perform a task or series of tasks that involve any two of the following:
>
> (1) frequently repeated motions or muscle contractions that place strain on the affected tendon(s);
>
> (2) significant flexion, extension, ulnar deviation or radial deviation of the affected hand or wrist;
>
> (3) forceful exertion of the muscles utilized in handling or moving tools or other objects with the affected hand or wrist;
>
> and where such activity represents a significant component of the employment.

Tendinopathy is a generic descriptor of the clinical conditions in and around tendons, characterized by a combination of pain, swelling and impaired functioning.

Hand-wrist tendinopathy is characterized by a combination of pain, swelling and impaired functioning of the tendons around the hand-wrist.

The Board applies the following guiding principles when interpreting the descriptions used in Schedule B in connection with hand-wrist tendinopathy.

1. Frequently Repeated

A worker who is performing the same work task(s) again and again without interruption or rest between, is likely required to perform “frequently repeated motions or muscle contractions”.

Generally, tasks that place strain on the affected tendon(s), and that are considered to involve “frequently repeated motions or muscle contractions” are repeated:

- at least once every 30 seconds; or
- with at least 50 percent of the work cycle spent performing the same motions or muscle contractions, and less than 50 percent of the work cycle time for the affected muscle/tendon groups to return to a relaxed or resting state.

The Board assesses whether a worker was performing "frequently repeated motions or muscle contractions", in the context of each individual case, for tasks that involve shorter work cycle frequencies or greater periods of rest and recovery time than referred to above.

2. Significant Flexion, Extension, Ulnar Deviation or Radial Deviation

"Significant flexion, extension, ulnar deviation or radial deviation of the affected hand or wrist" means:

- moving (or holding) the hand or wrist in greater than 25 degrees of flexion from anatomical neutral (0 degrees);
- moving (or holding) the hand or wrist in greater than 25 degrees of extension from functional neutral (20 degrees from anatomical neutral);
- moving (or holding) the hand or wrist in greater than 10 degrees of ulnar deviation; or
- moving (or holding) the hand or wrist in greater than 10 degrees of radial deviation.

3. Forceful Exertion

"Forceful exertion of the muscles utilized in handling or moving tools or other objects with the affected hand or wrist" means that the muscles and tendons that are used are loaded to a significant proportion of the maximum mechanical limit of those tissues. This limit varies depending on factors such as the size, strength, and fitness level of the individual performing the work.

In determining whether the worker has been engaged in "forceful exertion" of the muscles utilized, the Board considers the following, including but not limited to:

- the weight of the tool or work object;
- the manner in which the tool or work object is moved (pushed, pulled, carried, lifted, lowered, gripped, pinched, etc.);
- the distance the tool or work object is moved;
- the speed at which the tool or work object is moved (extra force may be needed to start or stop moving objects);
- the amount of friction that exists between the tool or work object and the worker's hand (slippery tools may require greater force to grip) or between the tool or work object and other surfaces (greater force may be required to overcome that friction);

- whether tools or work objects are handled using a pinch grip or a power grip (pinch grips exert more force on the tendons of the thumb and fingers);

- whether sustained force must be applied (after an initial force is applied); and

- whether the tool or work object is vibrating (greater force may be required to control a vibrating object).

Other evidence may be relevant to determining whether there was "forceful exertion" in the circumstances of an individual case.

4. Significant Component of the Employment

Use in Schedule B item 13(a) of the words "where such activity represents a significant component of the employment" means that the worker has been exposed to the processes described in paragraphs (1), (2), and (3) of item 13(a) for sufficiently long that it is biologically plausible that the hand-wrist tendinopathy resulted from the employment activities.

Employment activities that involve minimal or trivial use of the hand-wrist as described in item 13(a) do not amount to "a significant component of the employment".

For claims that do not meet the descriptions contained in item 13(a) of Schedule B, see policy item #27.20, *ASTDs Listed in Schedule B Where No Presumption Applies*.

EFFECTIVE DATE:	March 1, 2015
AUTHORITY:	Section 1, 6(3), and Schedule B of the *Act.*
CROSS REFERENCES:	Policy item #26.01, *Recognition by Inclusion in Schedule B;* Policy item #27.20, *ASTDs Listed in Schedule B Where No Presumption Applies;* Policy item #26.21, *Schedule B Presumption.*
HISTORY:	Reference to specific text of the Schedule B presumption, along with definitions of tendinopathy and hand-wrist tendinopathy included for clarity. Definition of hand-wrist tendinopathy updated. Description of flexion and extension clarified.
APPLICATION:	This item applies to all decisions made on or after March 1, 2015.

#27.12 Shoulder Bursitis and Shoulder Tendinopathy

Schedule B lists “shoulder bursitis” (Schedule B item 12(b)) and “shoulder tendinopathy” (Schedule B item 13(b)) as occupational diseases. Schedule B provides a rebuttable presumption that shoulder tendinopathy and shoulder bursitis are due to the nature of employment where a worker was employed in a process or industry:

> Where there is frequently repeated or sustained abduction or flexion of the shoulder joint greater than 60 degrees and where such activity represents a significant component of the employment.

Tendinopathy is a generic descriptor of the clinical conditions in and around tendons, characterized by a combination of pain, swelling and impaired functioning.

Bursitis is inflammation of a bursa (a sac-like cavity found at a site of potential friction between tendons and muscles and a bony prominence lying beneath them). By virtue of its anatomical proximity to less flexible structures, a bursa can become inflamed if it is subjected to excessive friction, rubbing or pressure. Bursitis may also be caused by other conditions including autoimmune diseases, general inflammatory diseases (such as rheumatoid arthritis) and bacterial infections typically following a puncture wound.

Shoulder bursitis and shoulder tendinopathy are characterized by a combination of pain, swelling, and impaired functioning around the tendons of the shoulder.

The Board applies the following guiding principles when interpreting the descriptions used in Schedule B in connection with shoulder bursitis (Schedule B item 12(b)) and shoulder tendinopathy (Schedule B item 13(b)).

1. Frequently Repeated Abduction or Flexion of the Shoulder Joint

In determining whether a particular work task involves “frequently repeated or sustained abduction or flexion of the shoulder joint greater than 60 degrees”, the Board considers the following, including but not limited to:

- the frequency of the work cycle for the tasks being performed (how often there is abduction or flexion of the shoulder joint greater than 60 degrees);
- the amount of time during a work cycle that the affected muscle/tendon groups of the shoulder are working compared to the amount of time such tissues have to return to a relaxed or resting state;
- the amount of time between work cycles that the affected muscle/tendon groups of the shoulder have to return to a relaxed or resting state;

- whether other activities are performed between work cycles that require motions or muscle contractions that affect the ability of the affected muscle/tendon groups of the shoulder to return to a relaxed or resting state, and if so whether such activities are repetitive in nature.

Generally, tasks that are considered to involve “frequently repeated or sustained abduction or flexion of the shoulder joint greater than 60 degrees” are repeated:

- at least once every 30 seconds; or

- with at least 50 percent of the work cycle spent in abduction or flexion and where the muscle/tendon groups of that shoulder have less than 50 percent of the work cycle time to return to a relaxed or resting state.

The Board assesses whether a worker was performing “frequently repeated or sustained abduction or flexion of the shoulder joint greater than 60 degrees” in the context of each individual case for tasks that involve less frequent repetition or greater periods of rest and recovery time than referred to above.

2. Sustained Abduction or Flexion of the Shoulder Joint

“Sustained abduction or flexion of the shoulder joint” means that the shoulder joint is held in a static position of abduction or flexion greater than 60 degrees. The greatest pressure is placed on the shoulder bursa when there is between 60 and 120 degrees of abduction or flexion (0 degrees being when the arm is straight down by the side of the torso). The longer the shoulder joint is held in such a static position during the work cycle, and the less time the affected muscle/tendon groups of the shoulder have to return to a relaxed or resting state, the more one is able to conclude that the employment involves “sustained abduction or flexion of the shoulder joint”.

Conversely, the less time the shoulder joint is held in such a static position during the work cycle, and the more time that the affected muscle/tendon groups of the shoulder have to return to a relaxed or resting state, the less one is able to conclude that the employment involves “sustained abduction or flexion of the shoulder joint”.

3. Significant Component of the Employment

Use in Schedule B items 12(b) and 13(b) of the words “where such activity represents a significant component of the employment” means that the worker has been performing work activities involving the described use of the shoulder joint for sufficiently long that it is biologically plausible that the inflammation or degeneration affecting the shoulder has resulted from the employment activities.

Employment activities that involve minimal or trivial use of the shoulder joint do not amount to “a significant component of the employment”.

For claims that do not meet the descriptions contained in items 12(b) or 13(b) of Schedule B, see policy item #27.20, *ASTDs Listed in Schedule B Where No Presumption Applies*.

EFFECTIVE DATE:	March 1, 2015
AUTHORITY:	Section 1, 6(3), and Schedule B of the *Act.*
CROSS REFERENCES:	Policy item #26.01, *Recognition by Inclusion in Schedule B;* Policy item #27.20, *ASTDs Listed in Schedule B Where No Presumption Applies;* Policy item #26.21, *Schedule B Presumption.*
HISTORY:	Reference to specific text of the Schedule B presumption, along with updated definitions of shoulder tendinopathy and shoulder bursitis included for clarity. Incorporates terms from policy item #27.00. Former policy items #27.11, *Bursitis*, and #27.12, *Tendinitis and Tenosynovitis*, of the *Rehabilitation Services & Claims Manual*, Volume II are combined into this one policy because the two conditions share the same risk factors.
APPLICATION:	This item applies to all decisions made on or after March 1, 2015.

#27.13 Knee Bursitis

Schedule B lists “knee bursitis (inflammation of the prepatellar, suprapatellar, or superficial infrapatellar bursa)” as an occupational disease (Schedule B item 12(a)). Schedule B provides a rebuttable presumption that knee bursitis is due to the nature of employment where a worker was employed in a process or industry:

> Where there is repeated jarring impact against, or where there are significant periods of kneeling on, the involved bursa.

Bursitis is inflammation of a bursa (a sac-like cavity found at a site of potential friction between tendons and muscles and a bony prominence lying beneath them). By virtue of its anatomical proximity to less flexible structures, a bursa can become inflamed if it is subjected to excessive friction, rubbing or pressure. Bursitis may also be caused by other conditions including autoimmune diseases, general inflammatory diseases (such as rheumatoid arthritis) and bacterial infections typically following a puncture wound.

“Significant periods of kneeling”, as used in Schedule B in connection with knee bursitis, means kneeling for a period of time that is sufficiently long that it is biologically plausible that bursitis resulted from the employment activities. Employment activities that involve minimal or trivial periods of kneeling do not amount to a “significant period of kneeling”.

For claims that do not meet the descriptions contained in item 12(a) of Schedule B, see policy item #27.20, *ASTDs Listed in Schedule B Where No Presumption Applies*.

EFFECTIVE DATE:	March 1, 2015
AUTHORITY:	Section 1, 6(3), and Schedule B of the *Act.*
CROSS REFERENCES:	Policy item #26.01, *Recognition by Inclusion in Schedule B;* Policy item #27.20, *ASTDs Listed in Schedule B Where No Presumption Applies;* Policy item #26.21, *Schedule B Presumption*.
HISTORY:	Reference to specific text of the Schedule B presumption, along with updated definition of bursitis included for clarity. For increased accuracy, the wording of the Schedule B presumption is modified to refer to the "involved bursa" instead of the "affected knee".
APPLICATION:	This item applies to all decisions made on or after March 1, 2015.

#27.14 Hand-Arm Vibration Syndrome (HAVS)

Schedule B lists "hand-arm vibration syndrome" as an occupational disease (Schedule B item 16). Schedule B provides a rebuttable presumption that HAVS is due to the nature of employment where a worker was employed in a process or industry:

> Where there has been at least 1000 hours of exposure to tools or equipment which cause the transfer of significant vibration to the hand-arm of the worker.

HAVS is a condition also known as vibration-induced Raynaud's phenomenon or vibration-induced white finger.

Operators of vibratory tools or equipment may develop physiologic changes induced by that vibration. These tools and equipment include, but are not limited to, chainsaws, pneumatic drills, impact wrenches, chipping hammers, grinders, jackhammers, and polishers. Initial symptoms of these physiologic changes may include persistent numbness and tingling, swelling and/or blanching of the fingers.

The following represents a list of the most important risk factors relevant to the adjudication of all claims for HAVS.

1. Dose

This is the most important risk factor in the development of HAVS. It is a function of both the level or intensity of the vibration and the duration of that vibration. It is generally considered that frequencies in the range of 5 to 1500 cycles per second can be hazardous. Intensity is usually measured by the level of acceleration of the vibrating tool (the time rate of change of the speed of the

vibrating object measured in metres per second per second, or m/sec^2). The greater the dose of vibration (the greater the acceleration of the vibrating tool and/or the greater the cumulative hours of exposure to the vibration) the lower is the latency period measured from the time of first exposure to the vibration and the onset of symptoms of HAVS.

In order for the presumption to apply in the case of HAVS, there must have been at least 1000 hours of exposure. It should be noted, however, that the condition could occur with exposures less than 1000 hours if the intensity of the exposure is significant. Such cases are considered on their own merits.

2. Significant Vibration to the Hand-Arm

Use of the words “significant vibration” in Schedule B is a recognition that the intensity of vibration experienced by the worker must be significant for the presumption in favour of work causation to apply. The Board assesses whether a worker was exposed to “significant vibration” in the context of each individual case having regard to the evidence available.

Continuous exposure to vibration may increase the risk of developing HAVS when compared to exposure to vibration which is interrupted by rest periods (e.g. 10 minutes of rest during each hour of exposure).

The greater the grip force used to grasp the vibrating tool or equipment, the more efficient is the transfer of vibration energy to the hand-arm of the worker and the greater the risk that physiologic changes will occur. For some tools the greater the intensity of the vibration, the greater will be the grip force required to control the tool.

Anti-vibration gloves may absorb some of the higher frequencies (above 500 cycles per second) and allow workers to maintain hand temperatures and to prevent calluses. Conventional glove designs do little to absorb frequencies below 500 cycles per second. Some of these gloves may actually amplify lower frequencies.

3. Other Considerations

Workers with pre-existing conditions such as connective tissue diseases or vascular diseases may be more susceptible to vibration-induced physiologic changes that may result in HAVS.

In order to conclude that a worker suffers from HAVS, the Board must first determine that the worker does not suffer from primary Raynaud’s disease (which is a recognized clinical entity that has no known cause) or from other non-vibration induced causes of secondary Raynaud’s phenomenon. These include, but are not limited to, collagen vascular disease, peripheral vascular disease, or peripheral neuropathies such as carpal tunnel syndrome.

The presence or absence of these conditions should be commented upon by the physician who has assessed the worker.

Most compensable injuries and diseases involve an initial period of temporary disability during which temporary total or temporary partial disability benefits are paid. The physical impairment of the worker will usually improve in time until it disappears entirely or becomes permanent. However, in the case of some diseases, there is no initial period of temporary disability; the disability is permanent right from the time it first becomes manifest as a disability and no temporary disability benefits are payable. HAVS is one of these diseases. Permanent disability awards are payable in respect of the disabilities caused by these diseases only once a specified minimum level of impairment is reached. Temporary disability benefits are payable in those rare cases where a period of temporary disability results from the disease.

For claims that do not meet the descriptions contained in item 16 of Schedule B, see policy item #27.20, *ASTDs Listed in Schedule B Where No Presumption Applies*.

EFFECTIVE DATE:	March 1, 2015
AUTHORITY:	Section 1, 6(3), and Schedule B of the *Act.*
CROSS REFERENCES:	Policy item #26.01, *Recognition by Inclusion in Schedule B;* Policy item #27.20, *ASTDs Listed in Schedule B Where No Presumption Applies;* Policy item #26.21, *Schedule B Presumption*.
HISTORY:	Minor changes for clarity.
APPLICATION:	This item applies to all decisions made on or after March 1, 2015

#27.20 ASTDs Listed in Schedule B Where No Presumption Applies

Where a worker suffers from an ASTD listed in Schedule B**,** but the worker was not employed in the process or industry described opposite to the disease in the second column of Schedule B, there is no presumption of work causation. In these cases, the Board determines on the evidence whether the occupational disease was due to the nature of the employment under section 6(1) of the *Act* (see policy item #26.23*, Non-Scheduled Recognition and Standard of Proof*).

Even where the requirements of the second column of Schedule B are not met, Schedule B may still provide some guidance on the type of risk factors that may be considered in establishing work causation of the occupational disease in question. However, the requirements of the second column of Schedule B are not the only matters to be considered. It is only where the presumption applies that it may be unnecessary to consider such other matters because work causation will already have been established.

The compensability of a claim for an ASTD listed in Schedule B where the presumption does not apply depends on whether or not the employment activities (the employment-related exposure to risk factors) played a significant role in producing the ASTD. The employment-related exposure need not be the sole or even the predominant cause; it simply needs to have been of causative significance.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 6(1) of the *Act.*
CROSS REFERENCES:	Policy item #27.00, *Activity-Related Soft Tissue Disorders ("ASTDs") of the Limbs;* Policy item #26.20, *Establishing Work Causation*; Policy item #26.23, *Non-Scheduled Recognition and Standard of Proof.*
HISTORY:	February 1, 2020 – Amendments to provide guidance regarding the legal issue of causation, and to reflect title change to policy item #26.23. May 1, 2017 – Consequential amendment made on May 1, 2017 to reflect renumbering of policy item #26.23 (formerly #26.22). March 1, 2015 – Title changed so that it includes all ASTDs listed in Schedule B where there is no presumption. Cross reference to policy item #26.23 added because it provides general guidance on this topic. Content updated so that it applies to any ASTD where no presumption applies. June 1, 2009 – Delete references to Board officers.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#27.30 ASTDs Recognized by Regulation

The following ASTDs, which may be caused or aggravated by employment activities, have been designated or recognized as occupational diseases by regulation (section 1 of the *Act*):

- Bursitis (other than the forms of bursitis mentioned in item 12 of Schedule B of the *Act*);
- Carpal Tunnel Syndrome;
- Cubital Tunnel Syndrome;
- Disablement by vibrations;
- Hypothenar Hammer Syndrome;
- Plantar Fasciitis;
- Radial Tunnel Syndrome;
- Tendinopathy (other than the forms of tendinopathy mentioned in item 13 of Schedule B of the *Act*), including:

- Epicondylopathy, lateral and medial;
- Stenosing Tenosynovitis (Trigger Finger); and

- Thoracic Outlet Syndrome.

For occupational diseases recognized by regulation, there is no presumption in favour of work causation. These occupational diseases are compensable only if the evidence establishes in the particular case that the occupational disease is due to the nature of any employment in which the worker was employed (see policy item #26.23*, Non-Scheduled Recognition and Standard of Proof*, and policy item #27.00, *Activity-Related Soft Tissue Disorders ("ASTDs") of the Limbs*).

Medical/scientific evidence indicates that some employment-related risk factors are associated with the causation of some of the ASTDs recognized as occupational diseases by regulation. As discussed in policy items #27.31 through #27.36, the Board recognizes that such employment-related risk factors are associated with causation of particular ASTDs. However, the Board also considers other employment-related and non employment-related risk factors associated with causation of ASTDs in every case where the Schedule B presumption does not apply (see policy item #27.00, *Activity-Related Soft Tissue Disorders ("ASTDs") of the Limbs*).

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 1 of the *Act.*
CROSS REFERENCES:	Policy item #26.23, *Non-Scheduled Recognition and Standard of Proof;* Policy item #27.00, *Activity-Related Soft Tissue Disorders ("ASTDs") of the Limbs;* Policy item #27.31, *Epicondylopathy;* Policy item #27.32, *Carpal Tunnel Syndrome;* Policy item #27.33, *Other Peripheral Nerve Entrapments and Stenosing Tenosynovitis;* Policy item #27.34, *Non-Specific Symptoms or Unspecified Non-Traumatic Diagnoses of the Limbs;* Policy item #27.35, *Hypothenar Hammer Syndrome;* Policy item #27.36, *Plantar Fasciitis*.
HISTORY:	February 1, 2020 – Amendment to reflect title change of policy item #26.23. May 1, 2017 – Consequential amendment made on May 1, 2017 to reflect renumbering of policy item #26.23 (formerly #26.22). December 1, 2015 – Consequential amendment resulting from creation of new policy item #27.36, *Plantar Fasciitis*, made effective December 1, 2015. March 1, 2015 – Conditions reordered alphabetically and bursitis and plantar fasciitis added to the list. Conditions listed as a subset under tendinopathy. Term epicondylopathy used in place of epicondylitis. Stenosing tenovaginitis (trigger finger) replaced with stenosing tenosynovitis based on current medical science.

Introduction added regarding how the risk factors set out in policy items #27.31 through #27.35 should be weighed in determining whether a claim is accepted.

APPLICATION: Applies to all decisions made on or after February 1, 2020.

#27.31 Epicondylopathy

Epicondylopathy is recognized as an occupational disease by regulation.

Epicondylopathy can be divided into lateral epicondylopathy, which is known as tennis elbow, and medial epicondylopathy, which is known as golfer's elbow. The lateral epicondyle of the elbow is the bony origin for common wrist extensors and supinator tendons. The medial epicondyle is the bony origin for common wrist flexors and pronator tendons.

Lateral epicondylopathy is characterized by pain at the lateral elbow with contraction of the muscles that extend the wrist, as in gripping and resisting wrist extension.

Medial epicondylopathy is characterized by pain at the medial elbow with contraction of the muscles that extend and flex the wrist, such as gripping and resisted wrist flexion.

Medical/scientific evidence on epicondylopathy does not as a whole confirm a strong association with employment activities and its mechanisms of development are obscure. Some individual studies do indicate an excess incidence of epicondylopathy in employments with tasks strenuous to the muscle-tendon structures of the arm. One often referred to theory suggests that microtears at the attachment of the muscle to the bone may be due to repetitive activity with high force sufficient to exceed the strength of the collagen fibres of the tendon attachment. This in turn may lead to the formation of fibrosis and granulation tissue.

As the medical/scientific evidence does not clearly relate epicondylopathy to any particular process or industry, the Board assesses work causation in the context of each individual case based on consideration of all relevant risk factors.

The Board recognizes that where the worker was performing frequent, repetitive, forceful and unaccustomed, employment-related movements (including forceful grip) of the wrist that are reasonably capable of stressing the inflamed tissues of the arm affected by epicondylopathy, and in the absence of evidence suggesting a non-work-related cause for the worker's epicondylopathy condition, a strong likelihood of work causation will exist. These factors are not preconditions to the acceptance of a claim for epicondylopathy nor are they the only factors that may be relevant. For example, lateral epicondylopathy has been shown to occur in tennis players (some studies showing a strong causative association) who are well accustomed to the motions and forces involved.

The issue to be determined in any individual claim is whether the evidence leads to a conclusion that the epicondylopathy is due to the nature of the worker's employment.

EFFECTIVE DATE:	March 1, 2015
AUTHORITY:	Section 1 and 6(1) of the *Act.*
CROSS REFERENCES:	Policy item #26.23, *Non-Scheduled Recognition and Standard of Proof;* Policy item #27.00, *Activity-Related Soft Tissue Disorders ("ASTDs") of the Limbs.*
HISTORY:	Term epicondylopathy used in place of epicondylitis and definition updated based on current medical science. Minor policy changes for clarity and consistency with other ASTD policies.
APPLICATION:	This item applies to all decisions made on or after March 1, 2015.

#27.32 Carpal Tunnel Syndrome

Carpal tunnel syndrome is recognized as an occupational disease by regulation.

Carpal tunnel syndrome is a condition caused by intermittent or continuous compression or entrapment of the median nerve as it passes through the carpal tunnel from the wrist to the hand. Increased pressure on the median nerve in the carpal tunnel can result in progressive sensory and motor disturbances in parts of the hand innervated by this nerve, leading to pain and loss of function. There are many causes of such a median nerve compression, both employment-related and non-employment related. Carpal tunnel syndrome occurs in the general population and often without any obvious cause.

Some theories suggest that repetitive stretching or compression of the median nerve in the carpal tunnel results in inflammation of the tissue. This may lead to tissue scarring and a reduction of the size of the carpal canal resulting in compression of the nerve. Ischemia (restriction of blood flow) may also play a role in causing carpal tunnel syndrome. A gradual thickening of the transverse carpal ligament, which may occur spontaneously with aging, has also been suggested as a possible mechanism.

A comparison of medical/scientific evidence on carpal tunnel syndrome indicates that work activities utilizing the hand/wrist that involve high repetition associated with high force, prolonged flexed postures of the wrist, high repetition associated with cold temperatures, or the use of hand-held vibrating tools are more likely to be associated with increased risk for carpal tunnel syndrome.

Non**-**employment-related risk factors include diseases or conditions that may contribute to reducing the size of the carpal canal including diabetes mellitus, rheumatoid arthritis, thyroid disorders, gout, ganglion formation, and other non-rheumatic inflammatory diseases. Pregnancy and use of oral contraceptives are

associated with increased risk for carpal tunnel syndrome. Other factors for which there is some evidence, at times conflicting, include hysterectomy, excision of both ovaries, age at menopause, obesity, and estrogen imbalances. The size of the carpal canal may be reduced by a Colles' fracture (which may or may not have occurred in the course of employment activities). The existence of such non-employment-related factors does not reduce the importance of the nature of the employment activities.

The Board recognizes that where the worker was performing frequent, repetitive and forceful, employment-related movements of the hand/wrist, including gripping, (particularly if unaccustomed) that are reasonably capable of stressing the tissues of the hand/arm affected by carpal tunnel syndrome, and in the absence of evidence suggesting a non-work-related cause for the worker's condition, a strong likelihood of work causation will exist. These factors are not preconditions to the acceptance of a claim for carpal tunnel syndrome nor are they the only factors that may be relevant.

The Board also considers whether the condition is bilateral (involving both wrists) and whether both wrists became symptomatic at the same or different times, in light of the degree to which each hand/wrist is utilized in carrying out the employment activities. As both hands may not perform identical activities and are therefore subject to different risk factors, a work-related carpal tunnel syndrome may be more likely to be unilateral. Carpal tunnel syndrome due to systemic illness is more likely to be bilateral. The Board also considers whether the symptoms of carpal tunnel syndrome improve with rest (stopping work) or whether they continue to progress or worsen. The latter may suggest a non-work-related cause.

As the medical/scientific evidence does not clearly relate carpal tunnel syndrome to any particular process or industry, the Board assesses work causation in the context of each individual case based on consideration of all relevant risk factors.

EFFECTIVE DATE:	March 1, 2015
AUTHORITY:	Section 1 and 6(1) of the *Act.*
CROSS REFERENCES:	Policy item #26.23, *Non-Scheduled Recognition and Standard of Proof;* Policy item #27.00, *Activity-Related Soft Tissue Disorders ("ASTDs") of the Limbs.*
HISTORY:	Definition of carpal tunnel syndrome updated based on current medical science. Minor policy changes for clarity and consistency with other ASTD policies.
APPLICATION:	This item applies to all decisions made on or after March 1, 2015.

#27.33 Other Peripheral Nerve Entrapments and Stenosing Tenosynovitis

Cubital tunnel syndrome, radial tunnel syndrome, thoracic outlet syndrome, and stenosing tenosynovitis (trigger finger) are each recognized as an occupational disease by regulation.

Cubital tunnel syndrome is a nerve entrapment in the upper limb and is caused by pressure on or stretching of the ulnar nerve near the elbow at the cubital tunnel.

Radial tunnel syndrome is characterized by symptoms of forearm pain without weakness when the radial nerve is pinched. The nerve enters the forearm at the lateral side of the elbow, where it passes next to and under the muscle of the lateral forearm. The space through which the nerve traverses may be narrowed by thick and tensed muscles, fibrous bands or other soft tissue swelling, and the nerve may be pinched as it travels past the narrowed area.

Thoracic outlet syndrome is the compression of the nerves and/or vessels, in the thoracic outlet region, by the anatomical structures in the area (bone, muscle, and connective tissues). The thoracic outlet is the area above the first rib and behind the clavicle.

Stenosing tenosynovitis (or trigger finger) is characterized by a fibrous thickening of the tendon sheath that results in a snapping movement of a finger due to swelling and restricted gliding of the tendon. It is often called “trigger finger”. This condition most commonly involves the flexor tendons of the hand.

Each of these ASTDs may be caused or aggravated by employment or non-employment-related activities, particularly in an individual who by virtue of their specific anatomical makeup is susceptible to these disorders.

As the medical/scientific evidence does not clearly relate any of these conditions to any particular process or industry, the Board assesses work causation in the context of each individual case based on consideration of all relevant risk factors.

EFFECTIVE DATE:	March 1, 2015
AUTHORITY:	Section 1 and 6(1) of the *Act.*
CROSS REFERENCES:	Policy item #26.23, *Non-Scheduled Recognition and Standard of Proof;* Policy item #27.00, *Activity-Related Soft Tissue Disorders (“ASTDs”) of the Limbs.*
HISTORY:	Definitions of cubital tunnel syndrome, radial tunnel syndrome, thoracic outlet syndrome and stenosing tenosynovitis updated. Minor policy changes for clarity and consistency with other ASTD policies.
APPLICATION:	This item applies to all decisions made on or after March 1, 2015.

#27.34 Non-Specific Symptoms or Unspecified Non-Traumatic Diagnoses of the Limbs

A worker may suffer from a gradual onset of symptoms that appear to be musculoskeletal or nerve-related and that are not categorized as any of the clinical entities described in policy items #27.11 through #27.33.

The Board considers a claim of this nature on its own merits even though a clinical entity familiar to the Board has not been diagnosed. The matters referred to in policy item #26.04, *Recognition by Order Dealing with a Specific Case*, would apply to such a claim. The Board should, however, make whatever inquiries it considers appropriate in the circumstances of the claim to determine whether the worker in fact suffers from one or more of the disorders referred to in policy items #27.11 through #27.33. The Board does this particularly when the symptoms cannot be categorized into a disease entity or syndrome, or when the diagnosis provided is a general one such as "repetitive strain injury", "cumulative trauma disorder", "overuse syndrome", "occupational cerviobrachial syndrome", or the like.

EFFECTIVE DATE:	March 1, 2015
AUTHORITY:	Section 1 and 6(1) of the *Act.*
CROSS REFERENCES:	Policy item #26.04, *Recognition by Order Dealing with a Specific Case;* Policy item #26.23, *Non-Scheduled Recognition and Standard of Proof;* Policy item #27.00, *Activity-Related Soft Tissue Disorders ("ASTDs") of the Limbs;* Policy item #27.11, *Hand-Wrist Tendinopathy;* Policy item #27.12, *Shoulder Tendinopathy and Shoulder Bursitis;* Policy item #27.13, *Knee Bursitis;* Policy item #27.14, *Hand-Arm Vibration Syndrome;* Policy item #27.31, *Epicondylopathy;* Policy item #27.32, *Carpal Tunnel Syndrome;* Policy item #27.33, *Other Peripheral Nerve Entrapments and Stenosing Tenosynovitis.*
HISTORY:	Minor changes for clarity, including change to policy title. June 1, 2009 – Delete references to Board officers.
APPLICATION:	This item applies to all decisions made on or after March 1, 2015.

#27.35 Hypothenar Hammer Syndrome

Hypothenar hammer syndrome is recognized as an occupational disease by regulation.

This condition is due to repeated blunt trauma to the ulnar border of the affected hand. It will often occur in workers who use their bare hand as a hammer in order to strike or pound hard objects.

The area of the hand where contact is made is usually the hypothenar eminence. Repeated blows to this ulnar portion of the hand can result in thrombosis or aneurysm formation in the branches of the ulnar artery, which in turn can produce a painful lump in the hypothenar area and/or numbness in the fourth or fifth fingers.

There are a number of non employment-related activities which may involve repeated blunt trauma to the ulnar border or other parts of the hand (e.g. participation in some martial arts or self defense activities, certain sports, such as handball and baseball, or playing certain percussion instruments). In the investigation of a claim for hypothenar hammer syndrome the Board will determine how and to what extent the worker uses the affected hand in striking or pounding objects in both employment-related and non employment-related settings.

As the medical/scientific evidence does not clearly relate hypothenar hammer syndrome to any particular process or industry, the Board assesses work causation of hypothenar hammer syndrome in the context of each individual case based on consideration of all relevant risk factors.

EFFECTIVE DATE:	March 1, 2015
AUTHORITY:	Section 1 and 6(1) of the *Act.*
CROSS REFERENCES:	Policy item #26.23, *Non-Scheduled Recognition and Standard of Proof;* Policy item #27.00, *Activity-Related Soft Tissue Disorders ("ASTDs") of the Limbs.*
HISTORY:	Policy moved to be listed after policy item #27.30, *ASTDs Recognized by Regulation*. Minor changes for clarity and consistency with the other ASTD policies.
APPLICATION:	This item applies to all decisions made on or after March 1, 2015.

#27.36 Plantar Fasciitis

"Plantar Fasciitis" is recognized as an occupational disease by regulation.

Plantar fasciitis is the name given to non-specific inflammation of the plantar fascia (a sheet of fibrous tissue on the plantar surface of the foot). The inflammation most commonly occurs in the heel (origin of the plantar fascia, at the calcaneus) and arch areas of the foot.

The Board generally accepts that plantar fasciitis can be related to significant unusual strain placed on the plantar fascia. Similarly, the Board generally considers that workers are at an increased risk for developing plantar fasciitis when they are exposed to direct trauma to the bottom of the foot through an accident, or when there is a significant unaccustomed physical strain or impact to the bottom of the foot. The Board defines the force, impact, or unusual strain to the bottom of the foot through an analysis of work activities.

As the medical/scientific evidence does not clearly relate plantar fasciitis to any particular process or industry, the Board assesses work causation in the context of each individual case based on consideration of all relevant risk factors.

EFFECTIVE DATE:	December 1, 2015
AUTHORITY:	Section 1 of the *Act*.
CROSS REFERENCES:	Policy item #26.03, *Recognition by Regulation of General Application*; Policy item #27.00, *Activity-Related Soft Tissue Disorders ("ASTDs") of the Limbs;* Policy item #27.30, *ASTDs Recognized by Regulation*.
HISTORY:	New policy created by BOD Resolution No. 2015/10/22-02.
APPLICATION:	This item applies to all decisions made on or after December 1, 2015.

#28.00 CONTAGIOUS DISEASES

There are a number of contagious diseases recognized by the Board as occupational diseases either in Schedule B or by regulation. See policy item #26.03.

A worker is not entitled to compensation simply because he or she contracted the disease while at work. For the disability to be compensable, there must be something in the nature of the employment which had causative significance. Thus, in these cases of contracting a contagious disease at work, it is a requirement for compensation that either:

1. The nature of the employment created for the worker a risk of contracting a kind of disease to which the public at large is not normally exposed; or

2. The nature of the employment created for the worker a risk of contracting the disease significantly greater than the ordinary exposure risk of the public at large. In this category, it would not be sufficient to show only that the worker meets more people than workers in other occupations, but it would be significant to show that in the particular employment the worker meets a much larger proportion of people with the particular disease than is found in the population at large.

It may help to illustrate these principles:

Example 1 — Suppose an outbreak of meningitis is affecting the community at large. The disease may be spreading at places of work, in the home, at schools, at churches, at social events, at sporting events, and every place where people meet. The Board would not, with regard to each worker suffering from the disease, seek evidence to decide whether that worker contracted the disease at work or elsewhere.

The disease would be viewed as a public health problem, not a disease due to the nature of any particular employment, and compensation for the workers involved must be found under general systems relating to sickness benefits, not under workers' compensation.

Example 2 — Suppose there are three cases of meningitis reported in the community. Victim 1 is a tourist from abroad. Victim 2 is a nurse who was engaged in the treatment of Victim 1. Victim 3 is a nurse who was working closely with Victim 2. Here the employment involved a risk of contracting a disease of a kind to which the public at large are not exposed, and the contracting of the disease by Victims 2 and 3 was due to the nature of their employment.

Example 3 — Suppose the disease is one of a low order of contagiousness, and one that does not normally spread through the public at large, but which can be contagious when there is exceptionally close contact, such as may come from two workers constantly holding materials together, or sharing the same room. If, in this situation, a worker catches the disease from a fellow worker, from the employer, or from a client of the employer, with whom the worker has been placed in exceptionally close proximity, it may well be concluded that the disease is due to the nature of the employment. For example, where two workers share sleeping quarters on board a ship, and one contracts tuberculosis from the other, the worker who contracted tuberculosis from the shipmate may be compensated.

Example 4 — Suppose a courier develops mononucleosis and claims compensation on the ground that in the job he or she meets more people than workers in most occupations and therefore has a greater risk of exposure to contagious diseases. Such a claim would not be allowed. The disease is one that spreads in the population at large, and claims of this nature cannot be allowed or denied by estimating the extent to which each employment involves mixing with the public.

Example 5 — Suppose a maintenance mechanic from British Columbia is sent to repair machinery in use by a customer overseas. While there, the worker contracts a disease that is commonly found among the population at large in that country, but which is not a common disease in British Columbia. That would be compensable. The nature of the employment has exposed the worker to a disease of a kind to which the people of this province are not normally exposed.

There is no requirement that a worker with a contagious disease should name a contact, but there should be some evidence of a contact. For example, if the worker was employed in a hospital, and there were three patients known to be in his or her working area of the hospital suffering from the disease, an inference may be drawn from the circumstantial evidence that the worker contacted the disease there, even though they may not remember the names of the patients, or may not remember whether they actually had contact with them. The strength of this circumstantial evidence would obviously depend partly on the strength of

evidence relating to alternative possibilities, such as whether the disease is extremely rare or one that is common in the community elsewhere. In other words, where there is no solid evidence of actual contact, the Board must still weigh the possibilities on the circumstantial evidence of possible contact and not simply reject the claim without weighing the possibilities.

EFFECTIVE DATE: June 1, 2009 – Delete references to Board officer.
APPLICATION: Applies on or after June 1, 2009

#28.10 Scabies

Claims for scabies will be accepted if the following three conditions are met:

1. The worker is employed in a hospital, nursing home, or other institution where there is a recognized hazard of contracting an infectious disease, or is directly involved in transporting patients or residents to or from such facilities.

2. There is satisfactory evidence the worker has had contact with an infected patient, resident or co-worker at the place of employment and the condition has occurred within a reasonable period of time following such contact (measured against the known incubation period for scabies). Evidence that there were persons in the place of employment known to be suffering from scabies is sufficient for this purpose if the worker would normally have direct contact with such persons in the performance of his or her employment duties.

3. The diagnosis of scabies is confirmed by a staff occupational health nurse, or by a physician or other qualified practitioner, and is not simply speculative. Skin scrapings need not be taken in order to give a positive diagnosis of scabies.

If any of the three conditions have not been met, the evidence is unlikely to support a finding that the worker suffers from scabies which is due to the nature of his or her employment.

EFFECTIVE DATE: February 1, 2020
AUTHORITY: Section 6(1) of the *Act*.
HISTORY: February 1, 2020 – Amendment made to provide guidance on the legal issues of standard of proof, evidence, and causation.
APPLICATION: Applies to all decisions made on or after February 1, 2020.

#29.00 RESPIRATORY DISEASES

#29.10 Acute Respiratory Reactions to Substances with Irritating or Inflammatory Properties

Schedule B lists "Acute upper respiratory inflammation, acute pharyngitis, acute laryngitis, acute tracheitis, acute bronchitis, acute pneumonitis, or acute pulmonary edema (excluding any allergic reaction, reaction to environmental tobacco smoke, or effect of an infection)" as an occupational disease. The process or industry listed opposite to it is "Where there is exposure to a high concentration of fumes, vapours, gases, mists, or dust of substances that have irritating or inflammatory properties, and the respiratory symptoms occur within 48 hours of the exposure, or within 72 hours where there is exposure to nitrogen dioxide or phosgene".

There are many agents used in industry and commerce in the province which have irritating or inflammatory properties, and which in sufficient concentrations can produce respiratory symptoms if inhaled. Symptoms associated with the inhalation of such substances can vary from mild transient symptoms (such as a mild burning sensation affecting the eyes, nose and throat) to significant symptoms throughout the respiratory tract (such as dyspnea and respiratory distress). Significant exposure to some substances may result in persistent respiratory symptoms.

Onset of symptoms can occur within a few minutes or several hours of the exposure, depending on the substance. For the presumption in section 6(3) of the *Act* to apply, the symptoms must appear within 48 hours of the exposure, unless the exposure is to nitrogen dioxide or phosgene, in which case the onset of symptoms must occur within 72 hours.

A claim for compensation made by a worker who has developed persistent or chronic respiratory symptoms considered to be due to exposure to a substance with irritating or inflammatory properties, must be considered on its own individual merits without the benefit of a presumption in favour of work causation (unless the claim meets the requirements of one of the other items of Schedule B). This includes claims for chronic bronchitis, emphysema, chronic obstructive pulmonary disease, obliterative bronchiolitis, reactive airways dysfunction syndrome (RADS), chronic rhinitis, and conditions considered to be due to exposure to tobacco smoke. The same is true of a claim made by a worker with acute respiratory symptoms where the requirements of section 6(3) of the *Act* are not met (see policy item #26.23). Where a worker who develops an acute reaction to a substance with irritating or inflammatory properties subsequently develops a persistent or chronic respiratory condition, a decision will be made based on the merits and justice of that claim on whether the chronic condition is a compensable consequence of the acute reaction.

A claim made by a worker who has inhaled a vapour or gas which was at a temperature high enough to cause thermal injury (such as inhaling steam) will be treated as a claim for a personal injury and will be adjudicated in accordance with the policies set out in Chapter 3.

Use of the words “high concentration” in Schedule B is a recognition that the amount of the particular substance in the air must be significant for the presumption to apply. The manner in which an exposed individual will react will depend on the properties of the substance inhaled (e.g., acidity/alkalinity, chemical reactivity, water solubility, asphyxiating potential) and the amount inhaled. Individual judgment must be exercised in each case to determine whether there was a "high concentration" of the particular substance having regard to the medical and scientific evidence available, including evidence as to the irritating and/or inflammatory properties of that substance.

EFFECTIVE DATE:	May 1, 2017
HISTORY:	May 1, 2017 – Consequential amendment made on May 1, 2017 to reflect renumbering of policy item #26.23 (formerly #26.22).
APPLICATION:	Applies on or after May 1, 2017.

#29.20 Asthma

Schedule B lists “Asthma” as an occupational disease. The process or industry listed opposite to it is “Where there is exposure to

(1) western red cedar dust; or

(2) isocyanate vapours or gases; or

(3) the dusts, fumes or vapours of other chemicals or organic material known to cause asthma.”

1. Evidence of Exposure

There are many substances which are either known to cause asthma in a previously healthy individual**,** or to aggravate or activate an asthmatic reaction in an individual with a pre-existing asthma condition. The significance of occupational exposures to these substances may be complicated by evidence that the worker is exposed to such substances in both occupational and non-occupational settings. In the investigation of the claim, the Board seeks evidence of whether the worker is exposed to any sensitizing or irritating substances (obtaining where available any material safety data sheets), the nature and extent of occupational and non-occupational exposure to such substances, and whether there is any correlation between apparent changes in airflow obstruction/responsiveness and exposure to such substances.

Additional medical evidence may be available in the form of airflow monitoring, expiratory spirometry, inhalation challenge tests, and skin testing for sensitization.

2. Pre-existing Asthma Condition

A pre-existing asthma condition is not compensable unless such underlying condition has been significantly aggravated, activated, or accelerated by an occupational exposure. A worker is not entitled to compensation where his or her pre-existing asthma condition is triggered or aggravated by substances which are present in both occupational and non-occupational settings unless the workplace exposure can be shown to have been of causative significance in aggravation of the condition. A speculative possibility that a workplace exposure to such a substance has caused an aggravation of the pre-existing asthma is not enough for the acceptance of a claim.

3. Temporary Disability

In the case of a compensable asthma or a respiratory tract reaction to a substance with irritating or inflammatory properties, temporary disability benefits are payable until the worker's acute symptoms resolve or stabilize or the worker reaches retirement age as determined by the Board.

4. Permanent Disability

(i) Work-Caused Asthma

Where workplace exposures have caused the worker to develop asthma (either allergic or irritant-induced) and the worker's acute symptoms do not entirely resolve, so that he or she is left with a permanent impairment of the respiratory system, the Board may grant a permanent disability award after considering the asthma tables in the *Permanent Disability Evaluation Schedule*.

(ii) Permanent Aggravation of Pre-existing Asthma

Where workplace exposures have caused a permanent aggravation of the worker's pre-existing asthma, so that the worker is unlikely to return to his or her pre-exposure state, the Board may grant a permanent disability award after considering the asthma tables in the *Permanent Disability Evaluation Schedule*. In these cases, the Board considers whether proportionate entitlement under section 5(5) of the *Act* is appropriate. (See policy items #44.00 to #44.31.)

In the situation described above, no permanent disability award is granted to a worker with a pre-existing asthma condition when the worker has returned to his or her pre-exposure state.

(iii) Asthma Due to Sensitization

Where workplace exposures to a sensitizing agent have caused the worker to develop asthma and the worker's acute symptoms resolve following removal from the workplace, the Board may consider the worker to have a permanent impairment where:

- the worker is left with a significant underlying allergy or sensitivity; and as a result
- the worker must avoid workplaces containing the sensitizing agent.

A significant underlying allergy or sensitivity is one where the worker reacts with asthmatic symptoms when exposed to a workplace sensitizing agent. This is indicated by increased bronchial reactivity and/or a significant change in peak flow when the worker returns to the workplace under conditions that do not expose the worker to excessive (i.e. irritant) levels of the sensitizing agent or other known respiratory irritants.

In determining whether there is a need to avoid certain workplaces, the Board considers the medical evidence, including the nature of the sensitization and the likelihood of an asthmatic reaction should the worker return to a work environment containing the sensitizing agent. In making this assessment, the Board considers medical advice from the attending physician and/or Board Medical Advisor.

Where it is found that the worker has a permanent impairment due to a significant underlying allergy or sensitivity, the Board considers the asthma tables found in the *Permanent Disability Evaluation Schedule* to assess the disability rating.

EFFECTIVE DATE:	February 1, 2020
HISTORY:	February 1, 2020 – Amendments to provide guidance on legal issues of evidence and causation. March 1, 2018 – Consequential amendment resulting from correcting typographical error in Schedule B. January 1, 2007 – Policy revised, including to provide that a worker may be considered to have a permanent impairment where the worker is left with a significant underlying allergy or sensitivity, and as a result, the worker must avoid workplaces containing the sensitizing agent. July 16, 2002 – Housekeeping change to update terminology.
APPLICATION:	Applies to all decisions made on or after February 1, 2020, respecting claims where the worker is first disabled from earning full wages, in accordance with section 6(1) of the *Act*, on or after March 1, 2018.

#29.30 Bronchitis and Emphysema

Bronchitis and emphysema are recognized as occupational diseases by regulation under section 1 of the *Act.*

Bronchitis and emphysema were recognized by regulation as occupational diseases on July 11, 1975. Medical evidence indicates that it would be an extremely rare case where a worker's employment environment could be shown to be the cause of the bronchitis or emphysema.

Where a person claims compensation in respect of bronchitis or emphysema, the Board considers that a history of heavy or significant cigarette smoking raises a strong inference that the worker's condition is due to the smoking and not to the nature of the employment. Against this inference must be weighed any evidence which supports the claim, but the inference will not be rebutted where the opposing evidence is weak or conflicting.

The principles set out above do not mean that a worker who has never smoked cigarettes or has smoked an insignificant amount will automatically be compensated for any bronchitis and emphysema. Evidence will still have to be produced that the disease is due to the nature of the employment. The advantage such a worker will have is that a major non-occupational cause of these diseases will have been eliminated. (7)

#29.40 Pneumoconioses and Other Specified Diseases of the Lungs

The guiding legislation in compensation for pneumoconioses is provided in sections 6(3) and 6(7) through 6(11) of the *Act*. Pneumoconiosis is a general medical term used to describe certain lung diseases due to deposition of particulate matter in the lungs.

#29.41 Silicosis

Schedule B lists "Silicosis" as an occupational disease. The process or industry described opposite to it is "Where there is exposure to airborne silica dust including metalliferous mining and coal mining". This later description does not exclude the presumption from applying to workers exposed to airborne silica dust engaged in employments other than metalliferous mining and coal mining.

By virtue of section 6(8) of the *Act*, a worker in the metalliferous mining industry or coal mining industry who becomes disabled from uncomplicated silicosis or from silicosis complicated with tuberculosis is entitled to compensation for total or partial disability. Where death results from the disability, the dependants of the worker are entitled to compensation. However, neither a worker nor a dependant is entitled to compensation for the disability or death unless the worker:

(a) has been a resident of the province for a period of at least three years last preceding his or her disablement, or unless at least two-thirds of their exposure to dust containing silica was in this province; and

(b) was free from silicosis and tuberculosis before being first exposed to dust containing silica in the metalliferous mining or coal mining industry in this province; and

(c) has been a worker exposed to dust containing silica in the metalliferous mining or coal mining industry in the province for a period or periods aggregating three years preceding his or her disablement, or for a lesser period if the worker was not exposed to dust containing silica anywhere except in this province.

"Silicosis" is defined in section 6(7) as ". . . a fibrotic condition of the lungs caused by the inhalation of silica dust". "Metalliferous mining industry" is defined in section 1 to include "the operations of milling and concentrating, but does not include any other operation for the reduction of minerals".

#29.42 Meaning of Disabled from Silicosis

The restrictions contained in section 6(1) do not apply to silicosis. It is, therefore, not a requirement of a claim for silicosis that there should be a lessened capacity for work, or that the worker should be disabled from earning full wages at the work at which he or she was employed.

It is a requirement in a claim for silicosis that the worker be "disabled" from the silicosis, or from silicosis complicated with tuberculosis. There is no definition of "disability" in the *Act*, and the Board has not attempted any comprehensive definition. If a worker has a condition of an internal organ which is so slight as to be unnoticeable to that person, and which causes no significant discomfort or other ill effects, that is not a "disability".

It can be difficult to fix the date for commencing the permanent disability award when there is no change of jobs or reduction in earnings to mark the inception of the disability. No general rules can be laid down for this purpose. The Board must decide the question according to the available evidence. However, if the evidence does not clearly establish when the disability commenced, and there is no evidence of the existence of a disability prior to the receipt of a particular medical report, the Board may properly decide that, according to the available evidence, the disability commenced on the date of the medical examination which was the subject of that report.

There may also be a difficulty in fixing the worker's average earnings when such worker is not employed at the time when the disability commenced.

The Board should generally refer back to the employment or employments in which the worker was most recently engaged and base any permanent disability award on the previous earnings thus discovered.

EFFECTIVE DATE: June 1, 2009 – Delete references to Board officers.
APPLICATION: Applies on or after June 1, 2009.

#29.43 Exposure to Silica Dust Occurring Outside the Province

Where the three criteria set out in policy item #29.41 are met, there will be no reduction in benefits according to the proportion of exposure to silica dust occurring outside the province versus that within. The Board will therefore pay full compensation to the worker without regard to the extent of exposure to silica dust outside the province. (8)

#29.45 Pneumoconiosis

When a worker has sustained pulmonary injury by a disabling form of pneumoconiosis as a result of exposure to dust conditions that are deemed by the Board to have contributed to the development of the disease in employment in the province in an industry in which that disease is an occupational disease under the *Act*, such worker or their dependants is or are entitled to compensation only if the worker was free from pneumoconiosis and tuberculosis before being first exposed to those dust conditions in the province, and if the worker's residence and exposure to the dust conditions have been of the duration required to entitle a worker to compensation for silicosis under policy item #29.41. (9)

Schedule B lists "Other pneumoconioses" as an occupational disease. The process or industry described opposite to it is "Where there is exposure to the airborne dusts of coal, beryllium, tungsten carbide, aluminum or other dusts known to produce fibrosis of the lungs".

#29.46 Asbestosis

Schedule B lists "Asbestosis" as an occupational disease. The process or industry described opposite to it is "Where there is exposure to airborne asbestos dust".

A worker need not necessarily have worked directly with asbestos for the presumption to apply. The exposure may be a secondary exposure, such as working in an area where asbestos was used as insulation which was for years in a friable or decayed condition.

#29.47 Diffuse Pleural Thickening or Fibrosis and Benign Pleura Effusion

Schedule B lists “Diffuse pleural thickening or fibrosis, whether unilateral or bilateral” as an occupational disease. The process or industry described opposite to it is “Where there is exposure to airborne asbestos dust and the claimant has not previously suffered and is not currently suffering collagen disease, chronic uremia, drug-induced fibrosis, tuberculosis or other infection, trauma, or disease capable of causing pleural thickening or fibrosis.”

Schedule B also lists “Benign pleural effusion, whether unilateral or bilateral” as an occupational disease. The process or industry described opposite to it is “Where there is exposure to airborne asbestos dust and the claimant has not previously suffered and is not currently suffering collagen disease, chronic uremia, tuberculosis or other infection, trauma, or disease capable of causing pleural effusion.”

These items in Schedule B recognize that diffuse pleural thickening or fibrosis whether unilateral or bilateral, and benign pleural effusion, whether unilateral or bilateral, are likely to be due to the nature of the employment of workers exposed to airborne asbestos dust where the other known causes of the disease can be excluded.

#29.48 Mesothelioma

Schedule B lists “Mesothelioma (pleural or peritoneal)” as an occupational disease. The process or industry described opposite to it is “Where there is exposure to airborne asbestos dust.” Mesothelioma is a malignancy arising from the mesothelial tissue. As with Asbestosis, the exposure to airborne asbestos dust may be a secondary exposure.

#29.50 Presumption Where Death Results from Ailment or Impairment of Lungs or Heart

Section 6(11) provides that:

> Where a deceased worker was, at the date of his death, under the age of 70 years and suffering from an occupational disease of a type that impairs the capacity of function of the lungs, and where the death was caused by some ailment or impairment of the lungs or heart of non-traumatic origin, it must be conclusively presumed that the death resulted from the occupational disease.

This provision does not apply to deaths occurring before July 1, 1974.

The question whether the deceased suffered from an ". . . occupational disease of a type that impairs the capacity of function of the lungs, . . ." is not determined by the failure or success of any claim made in the deceased's lifetime. Thus, the Board can decide that there was such a disease at the date of death, even though it disallowed a claim made by the worker in respect of that disease. Alternatively, it can now conclude that there is no such disease, notwithstanding it accepted a claim made by the worker before his or her death in respect of the same condition. This can well happen because often there is new evidence available following a death, typically in the form of an autopsy report which may be the best evidence available.

Once the age of the worker and the conditions set out in section 6(11) have been established, it is conclusively presumed that the death resulted from the occupational disease. This presumption cannot be rebutted by contrary evidence.

If the deceased worker was over 70 years of age or for some other reason the presumption cannot be applied, medical and other evidence must be examined to determine whether the death resulted from the occupational disease.

#30.00 CANCERS

Mesothelioma is covered in policy item #29.48.

#30.10 Bladder Cancer

Schedule B lists "Primary cancer of the epithelial lining of the urinary bladder, ureter or renal pelvis" as an occupational disease. The process or industry described opposite to it is "Where there is prolonged exposure to beta-naphthylamine, benzidine, or 4-nitrodiphenyl". In adjudicating a claim for bladder cancer it is incumbent on the Board to assess whether the worker has had prolonged exposure to any of the substances listed in Item 4(h) of Schedule B.

In addition to the chemicals listed in Schedule B, the Board recognizes that aluminum smelter workers exposed to coal tar pitch volatiles have an increased incidence of bladder cancer.

Claims for bladder cancer from aluminum smelter workers which do not meet the descriptions contained in Schedule B are adjudicated on the basis of cumulative (or total) exposure to benzo-a-pyrene, a constituent of coal tar pitch volatiles. In the adjudication of such a claim the following principles and procedures apply:

1. If the disease develops within 10 years of a worker's first exposure to benzo-a-pyrene, it will not normally be considered to have resulted from that exposure.

2. In determining the severity of a worker's exposure, regard will, where the information is available, be given to the following ranking of exposure:

Ranking of Exposure	Exposure to B.S.M. (mg/m^3)
Zero	0
Low	0.1
Medium	0.6
High	1.5

B.S.M. refers to benzene soluble materials.

3. To determine a worker's total occupational exposure, the years which the worker has spent in each job will be multiplied by the concentration of B.S.M. determined for that job by the rankings referred to above. For example, five years in a high risk job will produce a total exposure to B.S.M. of 7.5 mg/m^3 years (5 multiplied by 1.5). The worker's total or cumulative exposure to benzene-soluble materials is the sum of the exposures calculated for each job.

   Any exposure which occurred in the 10 years immediately preceding the date the bladder cancer was first diagnosed shall be excluded from this calculation.

4. To convert benzene-soluble materials exposure to benzo-a-pyrene exposure, the worker's total exposure to benzene-soluble materials (expressed in milligrams per cubic metre years or mg/m^3 years) is multiplied by 11.0. The result (total or cumulative benzo-a-pyrene exposure) is expressed in micrograms per cubic metre years or $\mu g/m^3$ years.

5. The worker's relative risk of having developed bladder cancer as a result of his/her employment in the aluminum smelter is then determined by comparing the worker's cumulative exposure to benzo-a-pyrene (calculated in accordance with the above principles) with the relative risk figures contained in the following table:

Cumulative Exposure to Benzo-a-pyrene	Relative Risk
0	1.00
5	1.16
10	1.32
15	1.48
20	1.64
25	1.80
30	1.96
31.25	2.00
35	2.12
40	2.28
45	2.44
50	2.60
60	2.92
70	3.24
80	3.56
90	3.88

Note: These numbers take into account scientific uncertainty and are based on the upper 95% confidence limit of the exposure-response relationship.

Where the worker's corresponding relative risk is equal to 2.00 or greater, it will be considered that the bladder cancer resulted from such employment and the claim will be accepted.

6. Where, having applied the above principles, the worker's relative risk is less than 2.00, or where the information necessary to calculate the worker's relative risk is not available, a detailed investigation will be carried out by the Board into the worker's job history to determine whether the level of exposure assessed for that worker is reasonable. Relevant considerations may include special work assignments, hours of overtime, individual work practices, and any other characteristics of the workplace or work environment which may have had an impact on the duration and

intensity of the exposure. If, following this investigation, it is concluded that the worker's relative risk is less than 2.00, it will be considered that the bladder cancer is not due to the worker's employment in the aluminum smelter and the claim will be disallowed.

7. Where the employer and the worker, through the worker's union, reach an agreement as to the total exposure of the worker to benzene-soluble materials in mg/m^3 years or to benzo-a-pyrene in $\mu g/m^3$ years, the Board is not bound to accept this amount and may follow the investigation and determination procedures outlined above. The amount agreed by the employer and the union may, however, be accepted in lieu of the investigation and determination procedures set out above if the agreed amount appears reasonable in the known circumstances of the case.

8. Smoking is a strong non-occupational risk factor for bladder cancer. Smoking and exposure to benzo-a-pyrene act synergistically in increasing the risk of developing bladder cancer. If the worker's relative risk calculated in accordance with the above principles is 2.00 or greater, the worker's smoking history will not change the conclusion that the bladder cancer was due to the employment.

EFFECTIVE DATE: June 1, 2009 – Delete references to Board officers.
APPLICATION: Applies on or after June 1, 2009.

#30.20 Gastro-intestinal Cancer

Schedule B lists "Gastro-intestinal cancer (including all primary cancers associated with the oesophagus, stomach, small bowel, colon and rectum excluding the anus, and without regard to the site of the cancer in the gastro-intestinal tract or the histological structure of the cancer)" as an occupational disease. The process or industry described opposite to Gastro-intestinal cancer is "Where there is exposure to asbestos dust if during the period between the first exposure to asbestos dust and the diagnosis of gastro-intestinal cancer there has been a period of, or periods adding up to, 20 years of continuous exposure to asbestos dust and such exposure represents or is a manifestation of the major component of the occupational activity in which it occurred."

Gastro-intestinal cancer suffered by a worker who has not been exposed to asbestos fibres in the course of their employment, or whose exposure to such fibres does not substantially have the duration, continuity and extent described in the second column of Schedule B, will not normally be considered to be due to employment.

Where there has been less than 20 years of continuous exposure to asbestos fibres, such that the presumption in section 6(3) does not apply, but there has been substantial compliance with the requirements of the second column of Schedule B, the Board will consider whether the evidence indicates that the gastro-intestinal cancer is due to the nature of the worker's employment. Whether or not the compliance is substantial is a matter of judgment for the Board. The greater the gap between the worker's period of exposure and the 20-year period, the less likely is the compliance to be substantial and the less likely is the disease to be due to the nature of the employment. (10)

EFFECTIVE DATE: June 1, 2009 – Delete references to Board officers.
APPLICATION: Applies on or after June 1, 2009.

#30.50 Contact Dermatitis

Schedule B lists "Contact dermatitis" as an occupational disease. The process or industry described opposite to it is "Where there is excessive exposure to irritants, allergens or sensitizers ordinarily causative of dermatitis".

1. Evidence of Exposure

There are many substances that may either cause contact dermatitis in a previously healthy individual or aggravate or activate a dermatological reaction in an individual with a pre-existing dermatitis condition. The significance of occupational exposures to these substances may be complicated by evidence that the worker is exposed to them in both occupational and non-occupational settings.

When investigating these claims, the Board seeks evidence on whether the worker is exposed to any sensitizing or irritating substances, obtaining where available any material safety data sheets. The Board gathers evidence on the nature and extent of occupational and non-occupational exposure to such substances, and whether there is any correlation between dermatological reactions and exposure. The Board also seeks medical evidence, for instance skin patch testing for sensitization.

2. Pre-existing Contact Dermatitis Condition

A pre-existing contact dermatitis condition is not compensable unless such underlying condition has been significantly aggravated, activated, or accelerated by an occupational exposure. A worker is not entitled to compensation where his or her pre-existing condition is triggered or aggravated by substances which are present in both occupational and non-occupational settings unless the workplace exposure can be shown to have been of causative significance in aggravation of the condition.

A speculative possibility that a workplace exposure to such a substance has caused an aggravation of the pre-existing contact dermatitis is not enough for the acceptance of a claim.

3. Temporary Disability

Temporary disability benefits are payable while the disability is a temporary one, but cease when the worker's acute symptoms resolve or stabilize or the worker reaches retirement age as determined by the Board.

4. Permanent Disability

(i) Work-Caused Contact Dermatitis

Where workplace exposures have caused the worker to develop contact dermatitis (either allergic or irritant-induced) and the worker's acute symptoms do not entirely resolve so that he or she is left with a permanent impairment of the skin, the Board may grant a permanent disability award after considering the contact dermatitis table in the *Permanent Disability Evaluation Schedule*.

(ii) Permanent Aggravation of Pre-existing Dermatitis

Where workplace exposures have caused a permanent aggravation of the worker's pre-existing dermatitis condition, so that the worker is unlikely to return to his or her pre-exposure state, the Board may grant a permanent disability award after considering the contact dermatitis table in the *Permanent Disability Evaluation Schedule*. In these cases, the Board considers whether proportionate entitlement under section 5(5) of the *Act* is appropriate. (See policy items #44.00 to #44.31.)

In the situation described above, no permanent disability award is granted to a worker with a pre-existing condition when the worker has returned to his or her pre-exposure state.

(iii) Contact Dermatitis due to Sensitization

Where workplace exposures to a sensitizing agent have caused the worker to develop allergic contact dermatitis and the worker's acute symptoms resolve following removal from the workplace, the Board may consider the worker to have a permanent impairment where:

- the worker is left with a significant underlying allergy or sensitivity; and as a result
- the worker must avoid workplaces containing the sensitizing agent.

A significant underlying allergy or sensitivity is one where the worker reacts with recurrent signs and symptoms of marked extent and severity when exposed to a workplace sensitizing agent. The worker experiences these signs and symptoms when he or she returns to the workplace under conditions that do not expose the worker to excessive (i.e. irritant) levels of the sensitizing agent or other known dermal irritants.

In determining whether there is a need to avoid certain workplaces, the Board considers the medical evidence, including the nature of the sensitization and the likelihood of a dermatological reaction should the worker return to a work environment containing the sensitizing agent. In making this assessment, the Board considers medical advice from the attending physician and/or Board Medical Advisor.

Where it is found that the worker has a permanent impairment due to a significant underlying allergy or sensitivity, the Board considers the contact dermatitis table found in the *Permanent Disability Evaluation Schedule* to assess the disability rating.

EFFECTIVE DATE:	February 1, 2020
HISTORY:	February 1, 2020 – Revised to provide guidance on legal issues of evidence and causation. January 1, 2007 – Revised to provide WorkSafeBC may consider a worker to have a permanent impairment where: (1) the worker is left with a significant underlying allergy or sensitivity; and as a result (2) the worker must avoid workplaces containing the sensitizing agent. July 16, 2002 – Housekeeping change.
APPLICATION:	Applies to all decisions made on or after February 1, 2020, respecting claims where the worker is first disabled from earning full wages, in accordance with section 6(1) of the *Act*, on or after January 1, 2007.

#30.70 Heart Conditions

Heart-related conditions which arise out of and in the course of a person's employment and which are attributed to a specific event or cause or to a series of specific events or causes are generally treated as personal injuries. They are therefore adjudicated in accordance with the policies set out in Chapter 3. If the heart-related condition of a worker is one involving a gradual onset and is not attributed to a specific event or cause or to a series of events or causes, the claim will be adjudicated under section 6 of the *Act*. (See Item C3-16.00, *Pre-Existing Conditions or Diseases*).

EFFECTIVE DATE:	May 29, 2014
APPLICATION:	Applies to all decisions made on or after May 29, 2014.

#31.00 HEARING LOSS

There are two bases on which compensation can be paid for hearing loss:

(a) If the hearing loss is traumatic and work-related, compensation is paid as with any other injury under section 5(1) and, if a permanent disability results, a permanent disability award is granted in accordance with the scale provided for in the Permanent Disability Evaluation Schedule (for hearing loss that is secondary to an injury see Item C3-22.00, *Compensable Consequences*).

(b) If the hearing loss has developed gradually over time as a result of exposure to occupational noise, it is treated as an occupational disease. However, the provisions of section 6 do not apply unless the worker ceased to be exposed to causes of hearing loss prior to September 1, 1975. In all other cases, section 7 of the *Act* applies. If the provisions of section 6 of the *Act* apply to the claim, the worker may be entitled to the payment of health care in the form of hearing aids even if they were not disabled from earning full wages at the work at which they were employed (see policy item #26.30, *Disabled from Earning Full Wages at Work*).

Section 7(1) provides that "Where a worker suffers loss of hearing of non-traumatic origin, but arising out of and in the course of employment . . ., that is a greater loss than the minimum set out in Schedule D, the worker is entitled to compensation . . ." Schedule D is set out in policy item #31.40, *Amount of Compensation under Section 7*.

Schedule B lists "Neurosensory hearing loss" as an occupational disease. Medical research indicates that it is only hearing loss of a neurosensory nature which is caused by exposure to noise over time (although this type of hearing loss may also result from other causes unrelated to exposure to noise). As a result, the Board's responsibility is limited to compensating workers for occupationally-induced neurosensory hearing loss. This is further emphasized in section 7 of the *Act* which requires that the loss of hearing be of non-traumatic origin and that it arise out of and in the course of employment.

In situations where a hearing loss is partly due to causes other than occupational noise exposure, the total hearing impairment is initially measured using pure tone air conduction pursuant to Schedule D. Having done this, in order to comply with the *Act*, other measures, such as bone conduction tests, are carried out to assess the portion of the total loss which is neurosensory and the portion which is due to other causes.

Having made this determination, the factual evidence on the claim is then assessed to determine whether all, or only part of, the neurosensory loss is due to occupational exposure to causes of hearing loss in British Columbia as required by the *Act*. The hearing loss is due to exposure to occupational noise in British Columbia if the worker's employment in British Columbia was of causative significance in the worker's hearing loss. Causative significance means more than a trivial or insignificant aspect.

The resulting portion of the worker's total impairment is then assessed for an award using the percentage ranges listed in Schedule D.

Tinnitus is a symptom that is commonly associated with noise-induced hearing loss. Tinnitus is not a personal injury or occupational disease in and of itself. Tinnitus may be compensable where it is:

- a compensable consequence of an accepted claim for noise-induced hearing loss (see Item C3-22.00, *Compensable Consequences*); and

- confirmed based on evaluation by a qualified person, such as an audiologist.

The Board assesses any permanent disability from tinnitus using a Board-approved subjective reporting scale that has been validated in the evidence-based literature, such as the Tinnitus Handicap Inventory. The Board uses the worker's score on the scale to assess the worker's disability under section 23(1) of the *Act* with reference to the following table:

Score (%)	Disability (%)
0	0
1 – 20	1
21 – 40	2
41 – 60	3
61 – 80	4
81 – 100	5

EFFECTIVE DATE: February 1, 2020
HISTORY: February 1, 2020 – Amendments to provide guidance on legal issue of causation.
APPLICATION: Applies to all decisions made on or after February 1, 2020.

#31.10 Date of Commencement of Section 7

Section 7(5) of the *Act* provides as follows:

> Compensation under this section is not payable in respect of a period prior to September 1, 1975; but future compensation under this section is payable in respect of loss of hearing sustained by exposure to causes of hearing loss in the Province either before or after that date, unless the exposure to causes of hearing loss terminated prior to that date.

Section 7 expressly applies only to hearing loss of non-traumatic origin which can only mean loss of hearing over some period of time as a cumulative effect. Therefore "terminated" as used in section 7(5) means the end once and for all of a course of exposure to causes of hearing loss. Exposure is not terminated as long as the worker continues to undergo exposure arising out of and in the course of the worker's employment in British Columbia, no matter how intermittent or how far apart periods of exposure might be. Only retirement or other cessation from employment in industries which expose the worker to causes of hearing loss qualify as "termination". Subsequent exposure for any period of time in bona fide employment allows for consideration of compensation under section 7.

Only exposure to noise in industries under Part 1 of the *Act* after September 1, 1975 should be considered to determine whether or not a worker qualifies for compensation under section 7.

If a worker's exposure to causes of hearing loss terminated prior to September 1, 1975, no compensation is payable under section 7 whatever may be the reasons for this termination. No exception can be made if, for instance, the termination came about because a previous compensable injury forced the worker to leave his or her employment. A worker whose exposure ceased prior to September 1, 1975 may be entitled to health care (hearing aids) under section 6 of the *Act*.

#31.20 Amount and Duration of Noise Exposure Required by Section 7

A claim is acceptable where, as a minimum, evidence is provided of continuous work exposure in British Columbia for two years or more at eight hours per day at 85 dBA or more, and the Board determines the worker's hearing loss is due to exposure to occupational noise. The Board considers it reasonable to set the 85 dBA minimum standard for compensation purposes and then to allow a restricted measure of discretion for the acceptance of claims where the evidence is abundantly clear that the worker is extraordinarily susceptible and has been affected by exposure to noise at a lesser level.

The Board does not accept evidence of the wearing of individual hearing protection as a bar to compensation. However, in the case of soundproof booths, where evidence shows that the booth was used regularly, was sealed and was generally effective, it may be difficult to accept that the work environment in question contributed to the hearing loss demonstrated.

Where the exposure to occupational noise in British Columbia is less than 5% of the overall exposure experienced by the worker, the claim is disallowed. Such a minimal degree of exposure is insufficient to warrant acceptance of the claim. Where the exposure to occupational noise in British Columbia is 90% or greater of the total exposure, a claim is allowed for the total hearing loss suffered by the worker. For percentages between 5 and 90, the claim is allowed for only that percentage of the hearing loss which is attributable to occupational noise in British Columbia, and the Board will accept responsibility for all health care costs related to the total hearing loss including the provision of hearing aids.

It has been suggested that after 10 years of exposure further loss is negligible. Generally speaking, the evidence is that the first 10 years has a significant effect at higher frequencies. However, where lower frequencies are concerned (up to 2,000 hz.) hearing loss continues after that time and may, in fact, accelerate in those later years. Therefore, since the disability assessment under Schedule D relies on frequencies of 500, 1,000 and 2,000 hz., no adjustments for duration of exposure are made.

EFFECTIVE DATE:	February 1, 2020
HISTORY:	February 1, 2020 – Amendment to provide guidance regarding the legal issues of evidence and causation. December 1, 2004 – Amendment regarding clarification of jurisdictional requirements and minor amendments. July 16, 2002 – Housekeeping changes.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#31.30 Application for Compensation under Section 7

Section 7(6) provides that “An application for compensation under this section must be accompanied or supported by a specialist’s report and audiogram or by other evidence of loss of hearing that the Board prescribes”.

Where a worker has already applied for compensation for hearing loss under section 6, a separate application under section 7 may sometimes be required. However, it will not be insisted upon if it serves no useful purpose. Therefore, no separate application need be made where all the evidence necessary to make a reasonable decision is available without it.

The original application need not be accompanied by a report and audiogram by a physician outside the Board. The Board will obtain the necessary medical evidence.

EFFECTIVE DATE: March 3, 2003 (as to deletion of references to appeal reconsideration)
APPLICATION: Not applicable.

#31.40 Amount of Compensation under Section 7

No temporary disability payments are made to workers suffering from non-traumatic hearing loss.

Workers who develop non-traumatic noise induced hearing loss are, subject to the time periods referred to in section 23.1 of the *Act*, assessed for a permanent disability award under section 23 of the *Act*.

Hearing loss permanent disability awards are determined on the basis of audiometric tests conducted at the Audiology Unit of the Board or on the basis of prior audiometric tests conducted closer in time to when the worker was last exposed to hazardous occupational noise if in the Board's opinion the results of such earlier tests best represent the true measure of the worker's hearing loss which is due to exposure to occupational noise.

Section 7(3.1) of the *Act* provides:

> The Board may make regulations to amend Schedule D in respect of
>
> (a) the ranges of hearing loss,
>
> (b) the percentages of disability, and
>
> (c) the methods or frequencies to be used to measure hearing loss.

Where the loss of hearing amounts to total deafness measured in the manner set out in Schedule D, but with no loss of earnings resulting from the loss of hearing, section 7(2) provides that compensation shall be calculated as for a disability equivalent to 15% of total disability. Where the loss of hearing does not amount to total deafness, and there is no loss of earnings resulting from the loss of hearing, section 7(3) provides that compensation shall be calculated as for a lesser percentage of total disability, and, unless otherwise ordered by the Board, shall be based on the percentages set out in Schedule D. Schedule D is set out below.

SCHEDULE D

Non-Traumatic Hearing Loss

Complete loss of hearing in both ears equals 15% of total disability. Complete loss of hearing in one ear with no loss in the other equals 3% of total disability.

	Percentage of Total Disability	
Loss of Hearing in Decibels Measured in Each Ear in Turn	**Ear Most Affected PLUS Ear Least Affected**	
0-27	0	0
28-32	0.3	1.2
33-37	0.5	2.0
38-42	0.7	2.8
43-47	1.0	4.0
48-52	1.3	5.2
53-57	1.7	6.8
58-62	2.1	8.4
63-67	2.6	10.4
68 or more	3.0	12.0

The loss of hearing in decibels in the first column is the arithmetic average of thresholds of hearing measured in each ear in turn by pure tone, air conduction audiometry at frequencies of 500, 1000 and 2000 Hertzian waves, the measurements being made with an audiometer calibrated according to standards prescribed by the Board.

In assessing permanent disability awards under section 7, there is no automatic allowance for presbycusis. In some cases, however, the existence of presbycusis may be relevant in deciding whether the worker has suffered a hearing loss due to their employment. The age adaptability factor is not applied to awards made under section 7.

Where a worker has an established history of exposure to noise at work, and where there are other non-occupational causes or components in the worker's loss of hearing, and where this non-occupational component cannot be accurately measured using audiometric tests, then "Robinson's Tables" will apply. "Robinson's Tables" will only be applied where there is some evidence of non-occupational causes or components in the worker's loss of hearing (for example, some underlying disease) and will not be applied when the measured hearing loss is greater than expected and there is only a speculative possibility without evidential support that this additional loss is attributable to non-occupational factors.

"Robinson's Tables" were statistically formulated to calculate the expected hearing loss following a given exposure to noise. In applying these tables, the cumulative period of noise exposure is calculated. A factor for aging is then added. For permanent disability award purposes, the resulting calculation is then compared on "Robinson's Tables" to the worst 10% of the population (i.e., at the same levels and extent of noise exposure, 90% of individuals will have better hearing than the worker).

In some cases, it will be found that a worker has already suffered a conductive hearing loss in one ear, unrelated to their work, which might well have afforded some protection against work-related noise-induced hearing loss in that ear. The normal practice in this situation would be to allocate the higher measure in Schedule D (the "ear least affected" column) to the other ear which has the purely noise-induced hearing loss.

A difficulty occurs where the worker is not employed at the time when their disability commenced. If there are no current earnings on which to base the permanent disability award, the Board should generally refer back to the employments in which the worker was most recently engaged and base the award on their previous earnings thus discovered.

If the worker is retired and under the age of 63 years as of the commencement of the hearing loss permanent disability award, periodic payments are made until the date the worker reaches 65 years of age. If the worker is retired and is 63 years of age or older as of the commencement of the hearing loss permanent disability award, periodic payments are made for two years following such date. See policy item #41.00, Duration of Permanent Disability Periodic Payments.

EFFECTIVE DATE:	February 1, 2020
HISTORY:	February 1, 2020 – Amendment to provide guidance regarding legal issues of evidence and causation. June 1, 2009 – Delete references to Board officers. August 1, 2003 – Disability rating changed for complete loss of hearing in one ear with no loss in the other. Revision also made to the frequencies at which loss of hearing is to be measured.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#31.50 Compensation under Section 7

Section 7(4) provides:

> If a loss or reduction in earnings results from the loss of hearing, the worker is entitled to compensation for total or partial disability as established under this Part.

Section 7(4.1) also provides:

> Compensation paid for a worker's loss of hearing under subsection (4) must not be less than the amount determined under subsection (2) or (3).

Compensation is not payable simply because a worker changes employment in order to preclude the development of hearing loss. As with any other occupational disease, there must be functional impairment from the disease before there can be compensation in any form. In other words, compensation is payable for a disability that has been incurred, not for the prevention of one that might occur.

Where a noise-induced hearing loss has been incurred, if a worker then changes employment to a lower paid but quieter job, that may trigger consideration by the Board of a permanent disability assessment notwithstanding that it may seem reasonable that with hearing protection, the worker may have stayed at the former employment. There is no obligation to stay in the employment with hearing protection rather than take lower paying work and claim compensation. Compensation in such cases is, as in all other cases, based on section 23(1) method of permanent disability assessment. The drop in earnings may be the triggering device that renders the worker eligible for compensation, but it is not part of the formula for calculating the amount.

The duration of entitlement to permanent disability periodic payments is established under section 23.1 of the *Act* and discussed in policy item #41.00, Duration of Permanent Disability Periodic Payments.

#31.60 Reopenings of Section 7 Pension Decisions

Where the loss of hearing of a worker who is in receipt of a permanent disability award under section 7 is retested on or after June 30, 2002 and there is a significant change in the worker's hearing, the following applies:

1. Where the retest records a deterioration in the worker's hearing and the new findings warrant an increase under Schedule D of the *Act*, the permanent disability award decision is reopened and the award is increased.

2. If the retest shows an improvement in the worker's hearing of a degree greater than 10 decibels, the worker's award is reopened. Where this occurs, two further considerations would apply.

    (a) Where the worker has been paid the award in the form of a lump-sum payment, the worker is advised in writing that his or her hearing has improved to the point where such a payment would no longer appear justified or appropriate. However, in those cases, no attempt is made by the Board to seek a refund.

(b) Where the worker's award is being paid in the form of a periodic monthly payment, the payments are reduced or terminated, whichever is applicable, and the worker is informed in writing of the reasons and of the right to request a review of the decision by the Review Division.

If the retest suggests there is an improved level of hearing than that upon which the original permanent disability award was set, but the improvement is within a range up to and including 10 decibels, the permanent disability award is not reopened.

A worker who has ceased to have entitlement to a permanent disability award in accordance with the provisions of section 23.1 of the *Act* (see policy item #41.00) will not be retested by the Board.

EFFECTIVE DATE: March 3, 2003 (as to references to reopening, review and the Review Division).
APPLICATION: Not applicable.

#31.70 Compensation for Non-Traumatic Hearing Loss under Section 6

A worker will only be entitled to compensation for non-traumatic hearing loss under section 6(1) if their exposure to causes of hearing loss terminated prior to September 1, 1975. "Neurosensory hearing loss" is one of the occupational diseases listed in Schedule B of the *Act.* The process or industry described opposite to it is "Where there is prolonged exposure to excessive noise levels".

Section 55 of the *Act* sets out the time limits within which an application for compensation must be filed. Subsection (4) of the present section 55 provides:

> This section applies to an injury or death occurring on or after January 1, 1974 and to an occupational disease in respect of which exposure to the cause of the occupational disease in the Province did not terminate prior to that date.

The result of this provision is that where a worker's exposure to causes of hearing loss terminated prior to January 1, 1974, the present section 55 does not apply and one must look to the provision which was repealed on the enactment of this section.

Under the previous section 55 (then numbered 52), a claim is, subject to subsection (4), barred unless an application for compensation, or in the case of health care, proof of disablement, is filed within one year after the day upon which disablement by industrial disease occurred. The Board has no general power to waive these requirements and extend the time period in which an application must be submitted beyond the period set out in section 52(4). To determine what is meant by "disablement" in this provision, one must refer back to section 6(1) of the *Act* which provides in part that no compensation, other than health care, is payable in respect of an occupational disease unless the worker is ". . . thereby disabled from earning full

wages at the work at which the worker was employed . . ." The one-year time period under the previous and current section 55 does not begin to run until the worker becomes disabled from earning full wages within the meaning of section 6(1). It follows that in cases where the exposure to causes of hearing loss terminated prior to January 1, 1974, and no disablement within the meaning of section 6(1) has yet occurred, health care can always be provided, whether or not an application for compensation has been received from the worker and regardless of the length of time which has elapsed since their exposure terminated. Once the disablement from earning full wages occurs, the worker then has one year to submit an application for compensation (if they have not already done so) or proof of disablement. If no application for compensation or proof of disablement has been received by the end of this period, the worker's claim becomes completely barred even though they may previously have received compensation in the form of health care. If the worker submits proof of disablement, but no application for compensation, by the end of this period only compensation in the form of health care is payable.

#31.80 Commencement of Permanent Disability Periodic Payments under Sections 6 and 7

The following applies to claims for loss of hearing of non-traumatic origin.

1. Where compensation is being awarded under section 6, then, subject to section 55, permanent disability awards shall be calculated to commence as of the date upon which the worker first became disabled from earning full wages at the work at which the worker was employed.

2. Where compensation is being awarded under section 7 in respect of a loss of earnings or impairment of earnings capacity, then, subject to section 55, permanent disability awards shall be calculated to commence as of the date when the worker first suffered such loss of earnings or impairment of earnings capacity, or as of September 1, 1975, whichever is the later.

3. Where compensation is being awarded under section 7 but not in respect of any loss of earnings or impairment of earning capacity, then, subject to section 55, permanent disability awards shall be calculated to commence as of the earlier of either the date of application or the date of first medical evidence that is sufficiently valid and reliable for the Board to establish a compensable degree of hearing loss under Schedule D of the *Act*. Where the date of application is used as the commencement date, subsequent testing must support a compensable degree of hearing loss as of the date of application. In no case will award benefits under section 7(3) commence prior to September 1, 1975.

#32.00 OTHER MATTERS

#32.10 Psychological/Emotional Conditions

The Board does accept claims where the psychological condition is a consequence of a compensable personal injury or occupational disease. (14) However, the Board has not recognized any psychological or emotional conditions as occupational diseases related to employment.

#32.15 Alcoholism

Alcoholism and alcohol-related cirrhosis of the liver have not been recognized by the Board as occupational diseases. (15)

Research indicates that many factors may be operative in causing alcoholism. While employment is one of the suggested factors, the evidence does not clearly support a conclusion that employment does have causative significance or that, if it does, it has particular significance over and above the others. It appears rather as just one factor, along with the alcoholic's individual physiology and psychology, their family, social and cultural surroundings and their own personal inability to control consumption.

#32.50 "Date of Injury" For Occupational Disease

For 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 will consider the occurrence of the injury as the date the worker first became disabled by such disease. A worker will be considered disabled for this purpose when they are no longer able to perform their 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 period of disability. 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 section 55 of the *Act*.

EFFECTIVE DATE:	June 1, 2009 – Delete references to Board officer.
HISTORY:	October 1, 2007 – Revised to delete reference to assigning a claim number.
APPLICATION:	Applies on or after June 1, 2009

#32.55 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 section 55 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 55 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 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 55. Section 55(2) says in part:

> (2) Unless an application is filed, or an adjudication made, within one year after the date of . . . death or disablement from occupational disease, no compensation is payable, except as provided in subsections (3), (3.1), (3.2), and (3.3).

Under the terms of a predecessor to the current section 55, 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.

#32.56 Applicants Who File Within Three Years

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

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

Section 55(3) says:

> (3) If the Board is satisfied that there existed special circumstances which precluded the filing of an application within one year after the date referred to in subsection (2), the Board may pay the compensation provided by this Part if the application is filed within 3 years after that date.

For a discussion of special circumstances, see policy item #93.22.

If special circumstances do not exist, the Board cannot consider the claim, unless it meets section 55(3.2), because the application will be out of time.

#32.57 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 benefits under section 55(3.1). If special circumstances precluded applying within one year, the Board may still consider starting compensation benefits from the date the Board received the application. However, the Board cannot consider compensation benefits for periods before that date, unless the claim meets section 55(3.2).

Section 55(3.1) says:

> (3.1) The Board may pay the compensation provided by this Part for the period commencing on the date the Board received the application for compensation if
>
> (a) the Board is satisfied that special circumstances existed which precluded the filing of an application within one year after the date referred to in subsection (2), and
>
> (b) the application is filed more than 3 years after the date referred to in subsection (2).

As stated before, if special circumstances do not exist, the Board cannot consider the claim, unless it meets section 55(3.2), because the application will be out of time.

#32.58 Newly Recognized Occupational Diseases

As noted in policy item #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, part of section 55 applies only to claims for occupational disease.

The Board may consider paying compensation benefits 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 cause it to recognize the disease as an occupational disease for this worker's kind of employment.

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

Section 55(3.2) says:

> (3.2) The Board may pay the compensation provided by this Part if
>
> (a) the application arises from death or disablement due to an occupational disease,
>
> (b) sufficient medical or scientific evidence was not available on the date referred to in subsection (2) 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 sufficient medical or scientific evidence as determined by the Board became available to the Board.

If, after July 1, 1974, and before August 26, 1994, the Board has considered an application and has determined that all or part of the claim cannot be paid because of the wording of section 55 then in effect, the Board may now under section 55(3.3) reconsider the claim and pay compensation for those periods previously denied if it meets the requirements of section 55(3.2).

Section 55(3.3) says:

> (3.3) Despite section 96(1), if, since July 1, 1974, the Board considered an application under the equivalent of this section in respect of death or disablement from occupational disease, the Board may reconsider that application, but the Board must apply subsection (3.2) of this section in that reconsideration.

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 Schedule B, 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 55(3.2) allows the Board to consider the payment of compensation benefits 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 55(3.3) allows the Board to reconsider any claims for bladder cancer that meet the requirements of section 55(3.2) and to pay compensation for any periods previously denied because of the wording of the earlier section 55 in effect since July 1, 1974. Sections 55(3.2) and (3.3) went into effect on August 26, 1994. If a claim for bladder cancer is filed after March 13, 1992, then the requirements of sections 55(2), (3), or (3.1) must be met before compensation can be paid.

EFFECTIVE DATE: March 3, 2003 (as to new wording of section 55(3.3))
APPLICATION: Not applicable.

#32.59 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 55 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 he or she 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 55 are met with respect to that period.

EFFECTIVE DATE: March 3, 2003 (as to reference to Review Division)
APPLICATION: Not applicable.

#32.80 Federal Government Employees

The rights of employees of the Federal Government to compensation for occupational disease are set out in section 4 of the *Government Employees Compensation Act.*This provides that an employee who is disabled by reason of an industrial disease due to the nature of the employment; and . . . the dependants of an employee whose death results from such . . . industrial disease . . . are, notwithstanding the nature or class of such employment, entitled to receive compensation at the same rate and under the same conditions as are provided under the law of the province where the employee is usually employed. Section 4(4) of this *Act* applies a similar provision to railway employees of the Federal Government.

The meaning of "employee" is discussed in policy item #8.10, *Federal Government Employees*. The place where an employee is usually employed is discussed in Item C3-12.10, *Federal Government Employees*.

#32.85 Meaning of "Industrial Disease" under Government Employees Compensation Act

"Industrial Disease" is defined in section 2 to mean "any disease in respect of which compensation is payable under the law of the province where the employee is usually employed respecting compensation for workmen and the dependents of deceased workmen".

Any employee who is disabled by reason of any disease that is not an occupational disease but is due to the nature of the employment and peculiar to or characteristic of the particular process, trade or occupation in which the employee is employed at the time the disease was contracted (17) and the dependants of a deceased employee whose death is caused by reason of such a disease, are entitled to receive compensation at the same rate as they would be entitled to receive under the *Government Employees Compensation Act* if the disease were an occupational disease, and the right to and the amount of such compensation is determined by the same board, officers or authorities and in the same manner as if the disease were an occupational disease.

NOTES

(1) Decision No. 231, 3 W.C.R. 87**DELETED**

(2) Decision No. 3, 1 W.C.R. 11

(3) S.6(1)(a)

(4) Decision No. 99, 2 W.C.R. 15

(5) Decision No. 205, 3 W.C.R. 16

(6) ODSC Charter, I W.C.R. 135 **DELETED**

(7) Decision No. 207, 3 W.C.R. 21

(8) An agreement entered into pursuant to section 8.1 of the *Act* may supersede

(9) S.6(10)

(10) Decision No. 232, 3 W.C.R. 91

(11) Decision No. 267, 3 W.C.R. 188 **DELETED**

(12) See policy item #93.24 **DELETED**

(13) See Chapter 6 **DELETED**

(14) See Items C3-12.00, *Personal Injury*, C3-22.30, *Compensable Consequences – Psychological Impairment* and C3-22.40, *Compensable Consequences – Certain Diseases and Conditions*

(15) Decision No. 348, 5 W.C.R. 127

(16) Decision No. 102, 2 W.C.R. 25 **DELETED**

(17) *Government Employees Compensation Act*, S.8(1)(a)

When the estimated date for terminating wage-loss benefits arrives, if the worker is still disabled, the Board makes a new decision as to whether the disability, or increased disability, is due to the compensable injury or the subsequent non-compensable incident that has aggravated the compensable injury. If the disability is due to the subsequent non-compensable incident, wage-loss benefits are terminated. However, if the disability is due to the compensable injury, wage-loss benefits may be continued.

In the marginal cases, it is impossible to do better than weigh the evidence related to the compensable injury against the evidence related to the subsequent non-compensable incident to reach a conclusion on the termination of wage-loss benefits. For decisions respecting the compensation or rehabilitation of a worker, the standard of proof under section 99(3) of the *Act* is "at least as likely as not."

The above applies even if the treatment for the subsequent non-compensable incident is carried out at the same time as treatment for the compensable injury and might not have been carried out at the time if the worker had not then sought treatment for the condition resulting from the compensable injury.

EFFECTIVE DATE:	February 1, 2020
HISTORY:	February 1, 2020 – Amendments to provide guidance regarding the legal issues of standard of proof, evidence, and causation.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#34.60 Payment Procedures

The decision whether wage-loss benefits are payable, the duration of those payments, and their amount, is made by the Board. The procedures followed in making this decision, including the rules of evidence followed, are dealt with in Chapter 12.

Payments of wage-loss benefits are usually made every two weeks. Cheques may be mailed to the worker. When a payment has been lost or stolen, or otherwise not received or cashed by the worker, the worker may request a reissue of the payment, but the Board will require a written and signed declaration of this from the worker before a reissue will take place.

Where a worker disagrees with the amount of wage-loss or permanent disability award and returns the cheque, or refuses to accept the cheque, the Board will not negotiate regarding the acceptance of the cheque. In such circumstances the worker is notified of the right to request a review from the Review Division with regard to the matter on the claim to which there is an objection. This policy also applies to those cases where a worker has elected to receive his or her permanent disability award cheque by electronic funds transfer.

Where, following a Board medical examination or the receipt of other reports, it is concluded that the worker is capable of resuming employment immediately, she or he will be notified as soon as possible. The Board recognizes that it would not be fair to delay the notification when the worker might be looking for employment in the meantime.

EFFECTIVE DATE: June 1, 2009 – Delete references to Board officers and inclusion of reference to funds transfer.
HISTORY: March 3, 2003 – Inclusion of reference to the Review Division.
APPLICATION: Applies on or after June 1, 2009

#35.00 TEMPORARY PARTIAL DISABILITY PAYMENTS

Section 30(1) provides that**:**

> Subject to sections 34(1) and 35(1), (4) and (5), if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment that equals 90% of the difference between
>
> (a) the worker's average net earnings before the injury, and
>
> (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
>
> (i) the average net earnings that the worker is earning after the injury;
>
> (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

#35.10 Meaning of Temporary Partial

The meaning of "temporary partial" is governed by the principles set out in policy item #34.10. The result is that in order to be eligible for benefits under section 30(1) a worker must have a temporary partial physical impairment as a result of the injury.

- a worker is medically capable of performing.

Once a suitable occupation is identified, the Board will estimate what the worker is capable of earning in that occupation. In calculating what the worker is capable of earning in the suitable occupation, there may be situations where the Board should also consider other factors. These factors include:

- any personal limitations upon re-employment, such as age or language;
- any external limitations upon re-employment, such as the possibility of loss of pension entitlement or seniority;
- limitations through the worker's own efforts and cooperation in becoming re-employed;
- general or local depressed economic conditions which limits the worker's re-employment irrespective of the occurrence of the injury.

The evidence must support a finding that these factors either alone or in combination would make it unreasonable for the Board to consider that occupation as suitable for the purpose of establishing what the worker is estimated capable of earning. These factors must be balanced against the goal of minimizing post-injury wage-loss.

With regard to economic conditions, the Board has to determine whether the worker's employment problem is primarily due to a residual temporary disability or is more likely to be due to the lack of suitable employment occasioned by economic circumstances.

Where the economy is the major factor in a worker's post-injury wage loss, compensation under section 30 is based on the difference between the worker's pre-injury wage rate and the wage rate of the jobs that would otherwise have been available were it not for the economic down-turn. However, where the worker's remaining disability makes him or her less viable as a potential candidate for employment in the labour force in competition with other non-disabled workers, the worker may be paid full benefits on the basis that the work is not reasonably available.

If economic conditions are such that had the worker not been injured**,** he or she also would have continued to be employed, then, even though alternative jobs are not available due to economic factors, the primary cause of the worker's loss is considered to stem from the injury. The worker is entitled to section 30 benefits up to and including full wage-loss benefits if there are no jobs reasonably available in the period being considered.

If a worker is working towards an employment objective under a rehabilitation plan, the worker is not expected to accept a lower paying alternative job in the interim, if the worker is cooperating in good faith and taking the job would negatively compromise the rehabilitation plan.

In all cases, the employment opportunity or opportunities should be available immediately or within the period under review (two weeks, one month) and there should be some certainty that workers would have these opportunities open to them should they choose to apply.

EFFECTIVE DATE:	February 1, 2020
HISTORY:	February 1, 2020 – Amendment to provide guidance regarding legal issues of standard of proof and evidence.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#35.22 Calculation of Earnings for Workers with Two Jobs

Where, prior to the injury, the worker was engaged in two occupations, but the injury only disables the worker from one, the pre-injury earnings are calculated by adding the earnings in both, subject to the statutory maximum. The post-injury earnings are calculated by combining the earnings in the job the worker continues to carry on, with the earnings (if any) which the worker is able to earn in some other suitable and available job in the time that would have otherwise been spent in performing the other pre-injury job.

#35.23 Minimum Amount of Compensation

The minimum amount of compensation is calculated in the manner set out in policy item #34.20 for temporary total disability but to the extent only of the partial disability. (5)

Where a worker's average earnings are less than the minimum, he or she will receive compensation equal in amount to his or her loss of earnings in any case where section 30 applies. Compensation in these situations will not be based upon 90% of average net earnings. Consequently, there will be no deductions from the worker's average earnings to produce average net earnings.

#35.24 Workers Engaged in Own Business

Where the worker is self-employed, the worker will often continue to work following a compensable injury. Though unable to perform the former heavier work, the worker can still perform administrative and other light work. Full wage-loss benefits will not be paid by the Board just because the worker cannot perform the heavier work. As the worker is doing some remunerative work,

As age 65 is the established retirement age under the *Act*, to continue to pay benefits after the age of 65, the evidence must support a finding that the worker would work past age 65. Evidence is also required so that the Board can establish the worker's new retirement date for the purposes of concluding wage loss benefits. The standard of proof under section 99(3) of the *Act* is "at least as likely as not" as described in policy item #97.00, *Evidence*.

The issue for the Board to determine is whether it is "at least as likely as not" that the worker would have retired after age 65. The Board considers the worker's statement of intention to retire after age 65, but must determine whether it is "at least as likely as not" that the worker would actually have retired later than age 65.

Examples of the kinds of evidence that may support a finding that a worker would retire after reaching 65 years of age, and to establish the date of retirement, include the following:

- names of the employer or employers the worker intended to work for after age 65, a description of the type of employment the worker was going to perform, the expected duration of employment, and information from the identified employer or employers to confirm that he or she intended to employ the worker after the worker reached age 65 and that employment was available;

- a statement from a bank or financial institution outlining a financial plan and post age 65 retirement date, established prior to the date of the injury; and

- an accountant's statement verifying a long-term business plan (for self-employed workers) established prior to the date of the injury, indicating continuation of work beyond age 65.

Where the above type of evidence is available, this would be evidence in support of a determination that a worker would have worked until after age 65.

The following are examples of other kinds of evidence that alone may not support a finding that a worker would retire after reaching 65 years of age:

- information provided from the worker's pre-injury employer, union or professional association regarding the normal retirement age for workers in the same pre-injury occupation and whether there are incentive plans for workers working beyond age 65;

- information from the pre-injury employer about whether the worker was covered under a pension plan provided by the employer, and the terms of that plan;

- information from the pre-injury employer or or union on whether there was a collective agreement in place setting out the normal retirement age;

- information regarding whether the worker would have the physical capacity to perform the work;

- financial obligations of the worker, such as a mortgage or other debts;

- family commitments of the worker; and

- an outstanding lease on a commercial vehicle (for self-employed workers).

These are not conclusive lists of the types of evidence that may be considered. The Board will consider any other relevant information in determining whether a worker would have worked past age 65 and at what date the worker would have retired.

Generally, the decision as to a worker's retirement date is made as part of the determination of a worker's entitlement to a permanent disability award.

In some circumstances, the decision as to a worker's retirement date may be made prior to the determination of a worker's entitlement to a permanent disability award. For example, when a worker's retirement date impacts a worker's entitlement to temporary disability or vocational rehabilitation benefits. In these cases, the retirement date on the temporary disability or vocational rehabilitation benefit will also apply to the resulting permanent disability benefit, if awarded.

Where the Board is satisfied that a worker would have continued to work past age 65 if the injury had not occurred, wage loss payments may continue past that age until the date the Board has established as the worker's retirement date. At the worker's age of retirement, as determined by the Board, wage loss payments will conclude even if the worker's temporary disability remains.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 23.1 of the *Act*.
HISTORY:	February 1, 2020 – Amendments to provide guidance on legal issues of standard of proof, evidence, and causation.
APPLICATION:	Applies to all decisions made on or after February 1, 2020

#35.40 Manner of Payment

Temporary partial disability payments are made in the same manner as temporary total disability payments. (7)

(b) if the worker is 63 years of age or older on the date of injury, until the later of the following:

(i) 2 years after the date of injury;

(ii) if the Board is satisfied that the worker would retire after the date referred to in subparagraph (i), the date the worker would retire, as determined by the Board.

Section 23.1 of the *Act* provides for the payment of compensation until a worker reaches 65 years of age.

Where the Board is satisfied a worker would retire after reaching 65 years of age, section 23.1 permits the Board to continue to pay benefits to the age the worker would retire after the age of 65 if the worker had not been injured.

For the purpose of this policy, a worker is generally considered to be retired when the worker substantially withdraws from the workforce and receives retirement income from one or more retirement-like sources (eg. CPP, OAS, employer pension plan, RRSP or other personal savings).

When determining whether a worker would retire after age 65, the circumstances under consideration are those of the individual worker as they existed at the time of injury.

As age 65 is the established retirement age under the *Act*, to continue to pay benefits after the age of 65, the evidence must support a finding that the worker would work past age 65. Evidence is also required so that the Board can establish the worker's new retirement date for the purposes of concluding permanent disability award payments. The standard of proof under section 99(3) of the *Act* is "at least as likely as not" as described in policy item #97.00, *Evidence*.

The issue for the Board to determine is whether it is "at least as likely as not" that the worker would have retired after age 65. The Board considers the worker's statement of intention to retire after age 65, but must determine whether it is "at least as likely as not" that the worker would actually have retired later than age 65.

Examples of the kinds of evidence that may support a finding that a worker would retire after reaching 65 years of age, and to establish the date of retirement, include the following:

- names of the employer or employers the worker intended to work for after age 65, a description of the type of employment the worker was going to perform, the expected duration of employment, and information from the

identified employer or employers to confirm that he or she intended to employ the worker after the worker reached age 65 and that employment was available;

- a statement from a bank or financial institution outlining a financial plan and post age 65 retirement date, established prior to the date of the injury; and
- an accountant's statement verifying a long-term business plan (for self-employed workers) established prior to the date of the injury, indicating continuation of work beyond age 65.

Where the above type of evidence is available, this would be evidence in support of a determination that a worker would have worked until after age 65.

The following are examples of other kinds of evidence that alone may not support a finding that a worker would retire after reaching 65 years of age:

- information provided from the worker's pre-injury employer, union or professional association regarding the normal retirement age for workers in the same pre-injury occupation and whether there are incentive plans for workers working beyond age 65;
- information from the pre-injury employer about whether the worker was covered under a pension plan provided by the employer, and the terms of that plan;
- information regarding whether the worker would have the physical capacity to perform the work;
- financial obligations of the worker, such as a mortgage or other debts;
- family commitments of the worker; and
- an outstanding lease on a commercial vehicle (for self-employed workers).

These are not conclusive lists of the types of evidence that may be considered. The Board will consider any other relevant information in determining whether a worker would have worked past age 65 and at what date the worker would have retired.

Generally the decision as to a worker's retirement date is made as part of the determination of a worker's entitlement to a permanent disability award.

In some circumstances, the decision as to a worker's retirement date may be made prior to the determination of a worker's entitlement to a permanent disability award. For example, when a worker's retirement date impacts a worker's entitlement to temporary disability or vocational rehabilitation benefits.

In these cases, the retirement date on the temporary disability or vocational rehabilitation benefit will also apply to the resulting permanent disability benefit, if awarded.

Where the Board is satisfied that a worker would have continued to work past age 65 if the injury had not occurred, permanent disability award periodic payments may continue past that age until the date the Board has established as the worker's retirement date. At the worker's age of retirement, as determined by the Board, periodic payments will conclude even if the worker's permanent disability remains.

In situations where a worker in receipt of a permanent disability periodic payments dies from causes unrelated to the disability, the periodic payments will continue for the full month in which the death occurred. The effect of this policy will be that no overpayments will be considered to have arisen for the period from the date of the worker's death up to the end of the month covered by the last periodic payment.

If the worker dies prior to the implementation of the permanent disability award, the award is calculated and paid to the date of death. The situation where such a worker would have received a lump sum award is dealt with in policy item #45.00.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 23.1 of the *Act*.
HISTORY:	February 1, 2020 – Amendments to provide guidance on legal issues of standard of proof, evidence, and causation.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#42.00 PAYMENT OF PERMANENT DISABILITY AWARDS

Permanent disability awards under sections 22 and 23 are normally payable monthly until the worker reaches retirement age as determined by the Board. However, some are paid as lump sums. The cheques are mailed to the worker's home address or, if she or he elects, direct to their bank by electronic direct bank deposit.

When a payment to a worker has been lost or stolen or otherwise not received or cashed by the worker, the worker may request a reissue of payment, but the Board will require a written and signed declaration of this from the worker before a reissue will take place.

#42.10 Commencement of Periodic Payments

The general rule is that the permanent disability periodic payments commence at the date when the worker's temporary disability ceased and his condition stabilized or was first considered to be permanent.

Where a worker has been paid any temporary disability benefits under section 29 or 30 of the *Act*, the permanent disability periodic payments will take effect from the date following the termination of these temporary benefits. For the majority of cases, this will adequately reflect the financial impact of the disability on the worker's earnings.

There may, however, be the unusual situation where a worker has or could have returned to a significant level of employment with a minimal loss of income. Wage-loss benefits under section 30 would be 90% of the worker's average net earnings in this employment. Should the worker eventually be assessed at a permanent disability award rate which is higher than the rate paid for temporary benefits under section 30, it would appear that the worker may have suffered a loss of compensation income. The *Act*, however, precludes the payment of both temporary and permanent benefits for the same condition at the same time.

A problem of permanent disability award retroactivity also occurs when, although the worker had a temporary partial disability, the worker had or could have returned to full employment and has not, therefore, actually been paid any benefits under section 30. As previously stated, the *Act* requires that the Board recognize a disability as either temporary or permanent, but not both concurrently. When carrying out the final disability assessment, the Board will have the benefit of the earlier examination, or at least some other documentary evidence on file, on which the decision was made to delay the award. If the findings on the latter examination are the same as the initial findings, or only show a minimal degree of change, it is reasonable to consider the condition as having plateaued from the date of the first examination. In that event, the date of the first examination should be the starting date of the permanent disability periodic payments. If, on the other hand, the latest examination shows a measurable and significant change since the first examination, the worker will be considered as having been, in the interim, temporarily disabled. In that event, the date of the last examination will be the starting date of the periodic payments.

When there was no examination by either a Board Medical Advisor or an External Service Provider when wage-loss benefits were terminated under section 30, and there is no other measurable data on file with which to make a comparison with the final assessment of the Board, the permanent disability award will be backdated to the date benefits were terminated under section 30.

EFFECTIVE DATE: June 1, 2009 – Delete references to Board officer.
APPLICATION: Applies on or after June 1, 2009

#42.12 Retroactive Awards

Where a permanent disability award is granted retroactively, the payments due prior to the date of the award will be paid in the form of a lump sum.

In calculating that sum, entitlement in respect of a portion of a month is determined by reference to the actual calendar days in a particular month.

For example, if a worker is entitled to an award of $1,000 per month, for the period March 17 to 31 (15 calendar days), the calculation is as follows:

$$\frac{\$1{,}000}{31 \text{ days}} \times 15 \text{ days} = \$483.87$$

A reduction in the lump sum is made in respect of periods of time during the period following the commencement of the award when the worker received wage-loss or rehabilitation benefits. However, no such reduction is made when the award is granted in the form of a lump sum and the monthly equivalent is less than $20.00 per month at the time of the commutation.

The payment of interest on the lump sum is dealt with in policy item #50.00.

#42.20 Permanent Disability Award Adjustments

If a permanent disability award to a worker or a dependant is paid or increased on the basis of a Review Division decision, and the finding is later reversed by the Workers' Compensation Appeal Tribunal, the permanent disability award payments are terminated or adjusted as of the date of the Workers' Compensation Appeal Tribunal decision. In such cases, the capitalization is adjusted by the reversal of an amount equivalent to the unused portion of the capitalization or, in the case of a modification, the adjustment applies to the amount of the capitalization affected by the modification. The policy regarding relief of costs to employers in such circumstances is detailed in policy item #113.10.

EFFECTIVE DATE: March 3, 2003 (as to references to Review Division and Workers' Compensation Appeal Tribunal)
APPLICATION: Not applicable.

#43.00 DISFIGUREMENT

Section 23(5) of the *Act* provides:

> Where the worker has suffered a serious and permanent disfigurement which the board considers is capable of impairing the worker's earning capacity, a lump sum in compensation may be paid, although the amount the worker was earning before the injury has not been diminished.

#43.10 Requirements for Award

Section 23(5) establishes the following requirements:

1. The disfigurement must be "permanent". A temporary disfigurement is not sufficient.

2. The disfigurement must be “serious”. No award will be made if the disfigurement is minimal

3. The disfigurement must be one that the Board considers capable of impairing the worker’s earning capacity. This is normally assumed in cases of the head, neck and hands. In other cases, a decision must be made which has regard to the age and occupation of the worker, the visibility and extent of the disfigurement and any other relevant circumstances. Since section 23(5) states that the amount the worker is currently earning does not have to be diminished, this requirement is concerned with the worker’s long-term earning capacity.

Where there is disfigurement as well as a permanent disability, the worker may receive awards for both. Subject to the Board applying section 35(2) of the *Act* (see policy item #45.00), the award for the permanent disability is a periodic payment, and the award for disfigurement a lump sum. These awards must be assessed separately.

Disfigurement is concerned with the appearance of the body, not loss of bodily function. Therefore, a loss of skin function, for example, soreness or itchiness or unusual sensitivity to light, heat or humidity, will be considered for a permanent disability rather than a disfigurement award. The granting of an award will depend on the normal criteria for permanent disability awards.

The ultimate aim of disfigurement and permanent disability awards is to compensate for loss of earning capacity. The worker should not receive double compensation for the same loss. No disfigurement award is granted for something which is directly covered by a permanent disability award, for example, the deformity caused by the normal appearance of an amputated limb. A disfigurement award may be considered where the appearance of an impairment for which a permanent partial disability award has been granted is disfiguring to an exceptional degree.

If the worker receives an award of 100% under section 23(1), or an award for total unemployability under section 23(3), there is no additional loss of earning capacity which can form the basis for a disfigurement award.

Where psychological disability results from disfigurement, consideration will be given to a permanent disability award under section 23(1) or 23(3) following the normal practices for such awards (see Item C3-22.30, *Compensable Consequences – Psychological Impairment*).

RE:	Compensation on the Death of a Worker Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit	ITEM:	C8-56.70

BACKGROUND

1. Explanatory Notes

This policy describes how compensation as a result of a worker's death is calculated for a person who, though not dependent upon the worker's earnings, had a reasonable expectation of pecuniary benefit from the worker.

2. The Act

Section 17:

> (3) Where compensation is payable as the result of the death of a worker or of injury resulting in such death, compensation must be paid to the dependants of the deceased worker as follows:
>
> (i) where
>
> (i) no compensation is payable under the foregoing provisions of this subsection; or
>
> (ii) the compensation is payable only to a spouse, a child or children or a parent or parents,
>
> but the worker leaves a spouse, child or parent who, though not dependent on the worker's earnings at the time of the worker's death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker, payments, at the discretion of the Board, to that spouse, child or children, parent or parents, but not to more than one of those categories, not exceeding $657.01 per month for life or a lesser period determined by the Board.

POLICY

1. Persons with a Reasonable Expectation of Pecuniary Benefit

This Item applies where

(a) no compensation is payable to a dependant of the deceased, or

(b) the compensation is payable only to a spouse, a child or children, or a parent or parents,

but the worker leaves a spouse, child or children, or parent or parents who, though not dependent upon the worker's earnings at the time of death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker.

A reasonable expectation of pecuniary benefit requires more than an assumption that the person would have received a financial benefit from the worker if the worker had not died. The evidence must support a finding that the worker would have provided an actual monetary benefit to the spouse, child or parent if he or she had not died.

Compensation may be payable to persons with a reasonable expectation of pecuniary benefit in only one of the following categories:

(a) spouse of the deceased worker;

(b) child or children of the deceased worker; or

(c) parent or parents of the deceased worker.

An application for compensation from a spouse, child or parent, on the grounds that he or she is a dependant of the deceased worker will automatically be considered under this Item if it is concluded that the person was not wholly or partly dependent upon the worker's earnings at the time of the worker's death.

2. Calculation of Compensation

Compensation under this Item is determined at the Board's discretion. However, monthly payments must not exceed the following amount:

January 1, 2019	—	December 31, 2019	$644.99
January 1, 2020	—	December 31, 2020	$657.01

If required, earlier figures may be obtained by contacting the Board.

3. Commencement of Benefits

Benefits under this Item commence on the day after the date of the worker's death.

4. Duration of Benefits

Compensation under this Item may be for life or for a lesser period as determined by the Board. For instance, before death the worker may have given a promissory note to a parent, undertaking to repay a loan with interest. In such a situation, the Board would not provide benefits for life because the parent's expectation of pecuniary benefit was not a lifelong expectation.

PRACTICE

For any relevant PRACTICE information, please consult the WorkSafeBC website at worksafebc.com.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 17(3)(i) of the *Act*.
CROSS REFERENCES:	Item C8-53.00, *Compensation on the Death of a Worker – Definitions – Meaning of "Dependant" and Presumptions of Dependency*; Item C8-53.20, *Compensation on the Death of a Worker – Definitions – Meaning of "Child" or "Children"*.
HISTORY:	February 1, 2020 – Amendment to provide guidance on the legal issues of standard of proof and evidence. Replaces policy item #60.00 of the *Rehabilitation Services & Claims Manual,* Volume II.
APPLICATION:	Applies to all decisions made on or after February 1, 2020, respecting the death of a worker on or after December 31, 2003.

This is a discretionary provision and will be applied only where the evidence supports a finding that the worker received employment insurance benefits due to the worker's employment in an occupation or industry that results in recurring seasonal or temporary interruptions of employment.

The Board may collect the necessary data to compile a list of industries and occupations that result in recurring seasonal or temporary interruptions of employment. The list must give regard to regional considerations and may adopt information from sources such as British Columbia Statistics, Statistics Canada or Human Resources and Skills Development Canada.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 33(3.2) of the *Act*.
HISTORY:	February 1, 2020 – Amendment to provide guidance on the legal issues of standard of proof and evidence. June 1, 2009 – Update reference to Human Resources and Skills Development Canada
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#68.50 Property Value Losses

No account will be taken of losses in property values alleged to be the result of the work injury, for example, where the injured person is disabled from working on and improving land which the person owns or there is a loss of goodwill in the business because of an inability to work in it.

#68.60 Payments in Respect of Equipment

Any portion of the wages paid to a worker which represents rental of equipment supplied by her or him is excluded from average earnings.

#68.61 Workers Deducting Business and/or Equipment Expenses

Section 33(1) of the *Act* provides that the Board must determine a worker's average earnings with reference to the "worker's average earnings and earning capacity at the time of the worker's injury."

A worker's earnings may include payment for business expenses or costs associated with equipment. Such a worker's average earnings are calculated based on the labour component of the worker's earnings, which is the portion of the earnings that remains after deductions for business expenses and/or costs associated with equipment.

This policy enables the Board to determine the labour component of a worker's earnings where the worker receives payment for providing services, out of which the worker must pay for any business expenses and/or costs associated with

equipment that is a required component of the contract of service. Such equipment is normally required to fulfill the contract, and represents a portion of the worker's costs in providing the service.

Generally, where a worker may deduct business expenses and/or costs associated with equipment from his or her earnings for business or tax purposes, this suggests that the worker's earnings include payment in respect of such costs and/or expenses. This policy does not apply to a worker receiving separate special expense reimbursements or allowances from an employer; the Board considers such payments under policy item #68.23 *Special Expenses or Allowances*.

(a) Short-Term Average Earnings

Business expenses (that is, expenses not associated with equipment) are generally not considered in a worker's short-term average earnings.

To calculate short-term average earnings for a worker who for business or taxation purposes deducts costs associated with equipment, the Board does not consider the worker's actual costs at the time of the injury.

The Board determines the labour component of such a worker's short-term average earnings by applying a percentage that represents the costs of supplying the appropriate category of equipment from the worker's date of injury earnings, set out as follows:

(i) Light Equipment

Where light equipment is supplied, the gross figure will be converted to gross wages by applying the following percentages.

Equipment	**Wages**
15%	85%

Examples of light equipment include chain saws, lawn mowers, and portable welding equipment and compressors not permanently mounted on vehicles.

(ii) Medium Equipment

Where medium equipment is supplied, the gross figure will be converted to gross wages by applying the following percentages.

Equipment	**Wages**
40%	60%

Examples of medium equipment include motor vehicles used for pilot car or local delivery services, and minor excavating equipment (e.g. two-wheel drive agriculture-type tractors, complete with backhoe attachments and/or front-end loader attachment).

(iii) Heavy Equipment

Where heavy equipment is supplied, the gross figure will be converted to gross wages by applying the following percentages.

Equipment	**Wages**
75%	25%

Examples of heavy equipment include logging trucks, skidders, bulldozers, and line haul trucks.

(b) Long-Term Average Earnings

In calculating the long-term average earnings of a worker who for business or taxation purposes deducts business expenses and/or costs associated with equipment, the Board decides which costs and/or expenses will be deducted from gross earnings to determine the labour component of the worker's gross earnings.

In determining whether the Board will deduct a business expense or a cost associated with equipment from a worker's gross earnings, the Board considers the following questions as appropriate:

1) Did the worker's gross earnings for the time period under review include payment in respect of the expense?

2) Did the worker incur the expense directly as a result of supplying equipment and/or materials to the employer?

3) Did the expense result from the worker operating his or her business?

4) Would the worker incur the expense regardless of the nature of the employment?

To calculate the amount the Board will deduct as an expense for equipment depreciation, the worker will be asked to provide the purchase price for any equipment that is a required component of the contract of service. The purchase price of such equipment is usually the invoiced value of the asset(s), including applicable taxes. Where a worker trades in another asset in order to purchase a new asset, the trade does not reduce the value of the acquired asset for the purposes of determining the purchase price.

The capital cost allowance or depreciation amount for equipment that is a required component of the contract of service will be deducted from gross earnings where it does not exceed 15 percent of the purchase price of the equipment.

Where the capital cost allowance or depreciation amount exceeds 15 percent of the purchase price, 15 percent of the purchase price will be deducted from gross earnings instead of the capital cost allowance or depreciation amount.

Where the worker does not declare a capital cost allowance or a depreciation amount for equipment that is a required component of the contract of service, the Board will not make a deduction for equipment depreciation from gross earnings for that equipment.

Interest accrued (whether paid or not) as the result of debt in respect of equipment owned by a worker that is a required component of the contract of service is considered a business expense. The accrued interest is deducted from gross income.

EFFECTIVE DATE: August 1, 2006
APPLICATION: The revised policy applies to injuries that occur on or after August 1, 2006.

#68.62 Fishers

Generally, where a fisher may deduct business expenses and/or costs associated with equipment from his or her earnings for business or tax purposes, this suggests that the fisher's earnings include payment in respect of such costs. In calculating the earnings of a fisher who, for business or taxation purposes, deducts business expenses and/or costs associated with equipment, the Board decides which costs and/or expenses will be deducted from gross earnings to determine the labour component of the fisher's gross earnings. This policy does not apply to a fisher receiving separate special expense reimbursements or allowances from an employer; the Board considers such payments under policy item #68.23 *Special Expenses or Allowances*.

In determining whether the Board will deduct a business expense or a cost associated with equipment from a fisher's gross earnings, the Board considers the following questions as appropriate:

1) Did the fisher's gross earnings for the time period under review include payment in respect of the expense?

2) Did the fisher incur the expense directly as a result of supplying equipment and/or materials for fishing activities?

3) Did the expense result from the fisher operating his or her business?

4) Would the fisher incur the expense regardless of the nature of the employment?

To calculate the amount the Board will deduct as an expense for equipment depreciation, the fisher will be asked to list the purchase price of the vessel or the other equipment used to harvest fish. The purchase price of a vessel or equipment used to harvest fish is the invoiced value of the asset(s), including applicable taxes. Where a fisher trades in an equipment asset in order to purchase a new equipment asset, the trade does not reduce the value of the acquired equipment asset for the purposes of determining the purchase price.

The capital cost allowance or depreciation amount for a vessel or equipment used to harvest fish will be deducted from gross earnings where it does not exceed 15 percent of the purchase price of the equipment.

Where the capital cost allowance or depreciation amount exceeds 15 percent of the purchase price, 15 percent of the purchase price will be deducted from gross earnings instead of the capital cost allowance or depreciation amount.

Where the fisher does not take a capital cost allowance or a depreciation amount for a vessel or equipment used to harvest fish, the Board will not perform a deduction for equipment depreciation from gross earnings for that equipment.

Interest accrued (whether paid or not) as the result of debt in respect of a fishing vessel used and owned by a commercial fisher is considered a business expense. The accrued interest is deducted from gross income.

The purchase of food as a business expense is not deducted from gross income as it is considered a direct benefit to the fisher and is a measurable return from the activities of fishing. The costs of maintenance for the vessel or other equipment used to harvest fish, fuel, fishing nets, and other appropriate costs are deducted from gross income as costs associated with equipment. See also policy item #65.03.

EFFECTIVE DATE: August 1, 2006
APPLICATION: The revised policy applies to injuries that occur on or after August 1, 2006.

#68.70 Payments to Substitutes

A worker may be partially able to perform the normal work or work full-time at other types of work, but pay a substitute to carry out jobs which the worker is unable to do. Compensation will still be paid in respect of the payment to the substitute but only to the extent of the difference between the value of the work being performed by the worker and the lesser of the worker's average net earnings and the statutory maximum. Where the value of that work exceeds the worker's average net earnings or the statutory maximum, no compensation is paid.

Where the worker is a principal of a limited company, the amount paid to a substitute may be one indication of the principal's pre-injury earnings level if these earnings are not otherwise clearly ascertainable because, for example, earnings have consisted of sporadic withdrawals from the income or profits of the corporation. If the principal continues to work in the business after the injury while employing a substitute to carry on part of the pre-injury functions, the amount paid to the substitute may, in comparison with the pre-injury earnings, be a factor in computing the value of the principal's post-injury work. Regard would, however, also have to be had to the nature and extent of the principal's activities after the injury compared with before the injury and the continued income received from the business after allowing for the costs of operation.

Where a worker has personal optional protection, benefits are calculated without regard to the fact that the worker is employing a substitute to do all the pre-injury work.

#68.80 Government Sponsored Work Programs

A variety of payment systems are currently in use for work programs, such as:

1. The simple continuation of Employment Insurance, Welfare or other benefits.

2. A "top-up" of Employment Insurance, Welfare or other benefits. Full payment by the employer, subsidized either in whole or in part from Employment Insurance, Welfare or other government funds. In cases of this type, the composition of average earnings is made up of the total dollar amount being paid to the worker either by the employer or the sponsoring government agency or a combination of either.

#68.90 Principals – Composition of Earnings

The *Assessment Manual* sets out who may be a principal, and criteria for determining whether a principal is a worker. Principals' average earnings are calculated based on earnings from employment, including earnings shown on official statements issued by the firm for income tax purposes and management fees. When determining the composition of a principal's average earnings, the Board may consider dividends and the repayment of a principal's loan to the employer as earnings in cases where it is shown that the amount received by the principal represents payment for the principal's labour.

If reported earnings are being received by a principal's spouse or child, then it should normally be considered for compensation purposes that the earnings belong to the spouse or child and not the principal. The same applies if information of this nature has been provided on Income Tax Reports.

In making reports of this nature for Income Tax purposes, the company is asserting that the principal's spouse or child did work in the business and did earn the money paid. The Board is required to consider any evidence which may show that this assertion is incorrect and to make its own determination. However, the Board is entitled to rely upon this assertion unless there is evidence to the contrary. Even if, upon investigation, the evidence shows that the spouse or child did not work for the company, that in itself does not mean that the payments to the spouse or child were earnings of the principal. There could be any number of other reasons why the company might make payments to the spouse or child.

In compensating the principal of a small limited company, the Board's obligations extend only to the losses suffered in the capacity of employee. Wage-loss compensation cannot be paid to reflect any detrimental effect that the injury may have on the company's business.

EFFECTIVE DATE:	February 1, 2020
HISTORY:	February 1, 2020 – Amendment to provide guidance on the legal issues of standard of proof and evidence. January 1, 2008 – Amendments to provide principals will be compensated based on their actual average earnings, as most other workers are.
APPLICATION:	Applies to all decisions made on or after February 1, 2020, respecting the calculation of average earnings for principals with injuries that occur on or after January 1, 2008.

#69.00 MAXIMUM AMOUNT OF AVERAGE EARNINGS

Section 33(3) provides that a worker's average earnings cannot exceed the "maximum wage rate".

The *Act* contains a special procedure for determining the maximum wage rate in force in any year. Section 33(7) provides that "Prior to the end of each calendar year, the board must determine the maximum wage rate to be applicable for the following calendar year." The maximum wage rate to be determined under subsection (7) is an amount that the Board thinks represents the same relationship to the sum of $40,000 as the annual average of wages and salaries in the province for the year preceding that in which the determination is made bears to the annual average of wages and salaries for the year 1984; and the resulting figure is rounded to the nearest $100. (10) For the purpose of determining annual average of wages and salaries under subsection (8), the Board may use data published or supplied by Statistics Canada. (11) Prior to 1986, the *Act* referred to $11,200 and 1972 as the factors in the formula for calculating the maximum.

For the maximum wage rates in force used to calculate temporary and permanent disability payments, see below.

	Yearly Applicable
January 1, 2019 – December 31, 2019	$84,800.00
January 1, 2020 – December 31, 2020	$87,100.00

If required, earlier figures may be obtained by contacting the Board.

The maximum wage rate is not subject to consumer price index adjustments. Nor can a worker who is in receipt of the current maximum compensation benefits receive the benefit of such adjustments. However, if the maximum wage rate is increased in any year, workers injured in a prior year who were limited by the maximum compensation for that year can receive the benefit of any applicable cost of living adjustments occurring after the increase. Such adjustments are calculated using the previous maximum as a base and cannot at any time increase the worker's compensation above the current maximum.

Increases in the maximum wage rate do not have the effect of increasing the existing compensation being paid to workers whose payments have been limited by the lower maximum existing in a previous year. An exception to this rule may occur when, on a reopening occurring more than three years after the injury, the Board exercises its authority under section 32 to base compensation payments on the worker's earnings at the time of the reopening. (12)

Authority to approve increases in the maximum wage rate under section 33 has been assigned to the President.

#69.10 Deduction of Permanent Disability Periodic Payments from Wage Loss

Section 31(1) provides as follows:

> Where a worker is receiving compensation for a permanent or temporary disability, the worker must not receive compensation for a further or other disability in an amount that would result in the worker receiving in the aggregate compensation in excess of the maximum payable for total disability.

Where a worker is entitled to wage-loss payments at the current maximum, and is in receipt of a permanent disability award under a previous claim, the permanent disability award is deducted from the wage-loss payments. If the wage-loss payments are less than the current maximum only the amount in excess of the maximum when the permanent disability award and wage loss are added together is deducted.

RE: Vocational Rehabilitation Principles and Goals	ITEM: C11-85.00

BACKGROUND

1. Explanatory Notes

This policy sets out the principles and goals of vocational rehabilitation.

2. The Act

Section 16:

(1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

(2) Where compensation is payable under this Part as the result of the death of a worker, the Board may make provisions and expenditures for the training or retraining of a surviving dependent spouse, regardless of the date of death.

(3) The Board may, where it considers it advisable, provide counselling and placement services to dependants.

POLICY

Quality Rehabilitation

The mission of the Board with respect to vocational rehabilitation services is to provide quality interventions and services to assist workers in achieving early and safe return to work and other appropriate rehabilitation outcomes. Quality rehabilitation requires individualized vocational assessment, planning, and support provided through timely intervention and collaborative relationships to maximize the effectiveness of rehabilitation resources and worker-employer outcomes.

The Board is committed to timely intervention to assist workers and employers in achieving successful return to work outcomes. The Board recognizes that early return to safe and durable work plays an important role in workers' recovery while helping maintain workers' dignity and productivity.

Principles of Vocational Rehabilitation

The guiding principles of quality vocational rehabilitation are:

1. Vocational rehabilitation should be initiated without delay and proceed in conjunction with medical treatment and physical rehabilitation to restore the worker's capabilities as soon as possible.

2. Reasonably necessary vocational rehabilitation assistance will be provided to overcome the immediate and long-term vocational impact of the compensable injury, occupational disease or fatality.

3. Successful vocational rehabilitation requires that workers be motivated to take an active interest and initiative in their own rehabilitation. Vocational programs and services should, therefore, be offered and sustained in direct response to the commitment and determination of workers to re-establish themselves.

4. Maximum success in vocational rehabilitation requires that different approaches be used in response to the unique needs of each individual.

5. Vocational rehabilitation is a collaborative process, which requires the involvement and commitment of all concerned participants.

6. Effective vocational rehabilitation recognizes, within reason, workers' personal preferences and their accountability for independent vocational choices and outcomes.

7. The gravity of the injury and residual disability is a relevant factor in determining the nature and extent of the vocational rehabilitation assistance provided. The Board should go to greater lengths in cases where the disability is serious than in cases where it is minor, including measures to assist workers to maintain useful and satisfying lives.

8. Where the worker is suffering from a compensable injury or disease together with some other impediment to a return to work, rehabilitation assistance may sometimes be needed and provided to address the combined problems. Rehabilitation assistance should not be initiated or continued when the primary obstacle to a return to work is non-compensable.

9. Vocational rehabilitation services should be provided in a cost-effective manner.

Goals

The objective of vocational programs and services is timely return to safe and durable work.

The goals of vocational rehabilitation are:

1. For workers with a temporary total disability, the goal is to assist injured workers in expediting recovery and return to work with the pre-injury employer. As these workers are considered unable to perform their pre-injury employment due to the disability, the goal is to return a worker to work with the pre-injury employer in a selective/light employment, a graduated return to work or a modified return to work arrangement.

2. For workers with a temporary partial disability, the goal is to assist injured workers in their efforts to return to work in a suitable occupation and maximize short-term earning capacity up to the pre-injury wage rate. This goal reflects the wording of section 30 of the *Act,* which refers to an assessment of what a worker is earning or is capable of earning in a suitable occupation.

3. For workers entitled to a permanent partial disability award, the goal is to assist injured workers in their efforts to return to work in a suitable occupation and maximize long-term earning capacity up to the pre-injury wage rate.

4. For workers entitled to a permanent total disability award, the goal is to assist in improving quality of life and minimizing the impact of the disability.

5. For surviving spouses and dependants of deceased workers, the goal is to provide counselling and vocational assistance to overcome the impact of the fatality.

In all cases, the goal is to provide reassurances, encouragement and counselling to help those entitled to compensation to maintain a positive outlook and remain motivated toward future economic and social capability.

Services Provided

These goals are met by providing the following services to its clients:

- counselling;

- vocational assessment and planning;
- job readiness/skill development;
- placement assistance;
- residual employability assessment; and
- assessment of a worker's need or continued need for rehabilitation and health care services and supports, where a worker's permanent total disability will continue past retirement age.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 16 of the *Act*.
CROSS REFERENCES:	Sections 22, 23, 29 and 30 of the *Act;* Item C11-91.00, *Vocational Rehabilitation – Vocational Assistance for Surviving Spouses and Dependants of Deceased Workers*; and Item C18-116.30, *Retirement Benefits – Retirement Services and Personal Supports* of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	February 1, 2020 – Policy revisions to add statements related to VR principles and goals. September 1, 2015 – Policy revisions to ensure consistent treatment of workers with permanent partial disability awards under sections 23(1) and 23(3) of the *Act.* June 1, 2009 – Deleted references to Vocational Rehabilitation Services. November 1, 2002 – Policy changes to set out the mission, principles and goals of Vocational Rehabilitation Services. Replaced policy items #85.00 to #85.60 of the *Rehabilitation Services & Claims Manual*, Volume II. Applies to decisions made on or after November 1, 2002 on claims adjudicated under the *Act,* as amended by the *Workers Compensation Amendment Act, 2002*.
APPLICATION:	This Item applies on or after February 1, 2020.

transitional skills or projected skills, aptitudes, training, interests and personal and occupationally significant characteristics.

- Describes a suitable occupation in which the worker can competitively pursue employment upon achievement of the vocational goal. This will be based on recognized methods of occupational classification. Where applicable, the description will include community-specific features of the occupation as determined through job analysis.
- Details the specific programs and services for the vocational goal to be attained and outlines the obligations of the participants.
- Details the methods, techniques and supports, which will be utilized to assist the worker in attaining the vocational goal. The sponsorship opportunities of other agencies are considered in providing integrated service delivery. Their availability does not limit the Board's provision of additional services in accordance with its policies.
- Outlines the wage-loss equivalency benefits and/or allowances (such as transportation and subsistence allowances) which will accompany the plan.
- Indicates the timeframes associated with the overall plan and its component steps.

A worker is entitled to one rehabilitation plan. The Board will monitor the plan to determine if the plan is progressing as anticipated. A plan may be modified or a new plan substituted where:

- worker's compensable condition deteriorates or improves, making the The initial plan inappropriate in relation to the goal; and/or
- There are significant developments in the vocational rehabilitation process, impacting the expected outcome of the plan.

Approval by the Director of Vocational Rehabilitation Services is required in order to proceed with the development of a new plan.

All involved parties will acknowledge the modified or new plan. The requirements for developing the initial plan apply to the modified or new plan.

Financial Implications/Cost Effectiveness

Each plan must set out the financial implications of implementing the plan and/or its cost effectiveness. The analysis may include such things as a comparison of the estimated cost of the necessary vocational services, the remaining compensation benefits that the worker is entitled to, the estimated cost of alternative rehabilitation plans, and the estimated benefit costs if no return to work services are provided. The analysis must also set out when it is expected that specific costs will be experienced.

Discontinuation of Vocational Rehabilitation Services

Vocational rehabilitation services may be discontinued where:

- the worker refuses available employment that is considered suitable in relation to the applicable phase of benefit entitlement;
- the worker fails to cooperate with vocational rehabilitation process;
- the worker has for personal reasons, withdrawn from the labour force;
- non-compensable medical, psycho-social or financial problems alone preclude active participation in the rehabilitation process;
- the worker retires or is deemed to have retired; or
- the plan is completed and it is neither necessary nor cost effective to provide further vocational rehabilitation assistance.

Wage-Loss Equivalency and Other Benefits

Wage-loss equivalency benefits provided by the Board are payable only when wage-loss benefits have concluded and follow the same rules with regard to the deduction of permanent disability awards. These benefits may apply while workers are either awaiting or undertaking specific vocational programs.

Transportation and subsistence allowances may also be considered in support of vocational programs.

The sponsorship opportunities of other agencies are considered in providing integrated service delivery, but their availability does not diminish the Board's primary service and funding responsibilities.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 16 of the *Act*.
CROSS REFERENCES:	Sections 22, 23 and 29 and 30 of the *Act;* Chapter 9 Average Earnings; Policy item #34.11, *Selective/Light Employment*; Policy item #69.10, *Deduction of Permanent Disability Periodic Payments from Wage Loss*; Policy item #70.30, *Permanent Disability Awards*; Item C10-83.00, *Transportation Allowances*; Item C10-83.10, *Subsistence Allowances*; Item C11-85.00, *Vocational Rehabilitation – Principles and Goals*;

Item C11-87.00, *Vocational Rehabilitation – Process*;
Item C11-90.00, *Vocational Rehabilitation – Spinal Cord and Other Severe Injuries*; and
Policy item #97.30, *Medical Evidence* of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: February 1, 2020 – Policy revised to add heading related to wage-loss equivalency and other benefits and to remove language that developments in VR process allowing a VR plan to be changed be 'unanticipated'.
September 1, 2015 – Policy revised to remove Vice President approval, and direct that the Director of VR Services is only required to approve the development of a new VR plan. Amendments also ensure workers who receive permanent partial disability awards under section 23(1) and 23(3) of the *Act* are treated consistently, and the elements that must be included in the financial analysis of a VR plan are revised.
June 1, 2009 – Deleted references to Board officer, Vocational Rehabilitation Services and Compensation and Rehabilitation Services.
November 1, 2002 – Reformatted and revised policy to set out the nature and extent of programs and services generally applicable in relation to the entitlement provisions of the *Act*. Amendments also include the criteria for modifying or creating a new plan and guidance on when vocational rehabilitation services may be discontinued. Replaced policy items #87.00 and #88.00 of the *Rehabilitation Services & Claims Manual*, Volume II and applies to decisions made on or after November 1, 2002 on claims adjudicated under the *Act*, as amended by the *Workers Compensation Amendment Act, 2002*.

APPLICATION: This Item applies on or after February 1, 2020.

POLICY

Relocation is considered to be a reasonable option for a worker after all other return-to-work options have been considered. Where no suitable occupations that will maximize the worker's post-injury earning capacity are available within a reasonable commuting distance of the worker's home community, the Board may recommend that the worker relocate to an area where there are greater prospects for employment opportunities in a suitable occupation.

An offer by the Board to relocate a worker will be made on the basis of the worker's individual circumstances. The primary factor to be considered is mitigation of the worker's long-term loss of earning capacity. A determination must be made that employment opportunities, on relocation, would substantially reduce the worker's post-injury wage loss.

Other factors that may be considered in determining whether it would be reasonable for a worker to relocate include age, family situation and/or connection to the community. The connection to the community must be significant and refer to the worker's obligations and responsibilities to the community separate from the worker's family situation. The evidence must support a finding that these other factors, either alone or in combination, would make it unreasonable for the Board to consider relocation. The primary factor will be the deciding factor unless the other factors considered either separately or in combination clearly outweigh the mitigation of the worker's loss of earning capacity.

The Board will pay reasonable expenses of relocation. Expenses paid by any other agency, may be deducted from the amount to be paid by the Board.

If the Board determines that relocation is reasonable and relocation expenses have been offered, the worker's benefits may be calculated as if the worker relocated.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 16 of the *Act*.
CROSS REFERENCES:	Sections 30 and 23(3) of the *Act,* Availability of Jobs *(*policy item #35.21), Suitable Occupation (policy item #40.12), and Vocational Rehabilitation - Employability Assessments – Temporary Partial Disability and Permanent Partial Disability (Item C11-89.00) of the *Rehabilitation Services & Claims Manual,* Volume II.
HISTORY:	February 1, 2020 – Amendment to provide guidance on the legal issues of standard of proof and evidence. Replaces, in part, policy item #40.12
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

RE:	Vocational Rehabilitation - Income Continuity	ITEM:	C11-89.10

BACKGROUND

1. Explanatory Notes

This policy deals with the payment of a rehabilitation allowance pending the assessment of a permanent partial disability award.

2. The Act

Section 16:

(1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation. ….

Section 23:

(1) … if a permanent partial disability results from a worker's injury, the Board must

(a) estimate the impairment of earning capacity from the nature and degree of the injury, and

(b) pay the worker compensation that is a periodic payment that equals 90% of the Board's estimate of the loss of average net earnings resulting from the impairment.

…

(3) … if

(a) a permanent partial disability results from the a worker's injury, and

(b) the Board makes a determination under subsection (3.1) with respect to the worker,

the Board may pay the worker compensation that is a periodic payment that equals 90% of the difference between

(c) the average net earnings of the worker before the injury, and

(d) whichever of the following amounts the Board considers better represents the worker's loss of earnings:

(i) the average net earnings that the worker is earning after the injury;

(ii) the average net *earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury*. (emphasis added)

(3.1) A payment may be made under subsection (3) only if the Board determines that the combined effect of the worker's occupation at the time of the injury and the worker's disability resulting from the injury is so exceptional that an amount determined under subsection (1) does not appropriately compensate the worker for the injury.

(3.2) In making a determination under subsection (3.1), the Board must consider the ability of the worker to continue in the worker's occupation at the time of the injury or to adapt to another suitable occupation.

POLICY

Continuity of Income Pending Assessment of Permanent Partial Disability Award

The Board may pay a rehabilitation allowance to assist workers who are not actively engaged in the rehabilitation process but who are awaiting assessment of their disability award. This allowance will be considered for workers

- whose disability has stabilized,
- who are unemployed, or employed at a reduced income level due to their compensable disability,
- who are not entitled to temporary wage-loss benefits,
- who are not receiving other wage-loss equivalency benefits from the Board, and

- who are likely to receive a permanent partial disability award under section 23(3) of the *Act*

Consideration will be given to the payment of a rehabilitation allowance between the end of wage-loss or other wage replacement payments and the commencement of the permanent partial disability award.

Prior to implementing an income continuity payment, the Board must have considered and offered to the worker all rehabilitation measures which are reasonable and might be of assistance to the worker.

Amount of Payment

Continuity of income payments are based initially on the same rate as the wage-loss benefit rate and will continue at that level until the permanent partial disability award is granted, except in any of the following circumstances:

1. The worker has retired.

2. The worker is experiencing non-compensable medical, psycho-social or financial problems which preclude active participation in the rehabilitation process.

3. The worker refuses to actively participate in the rehabilitation process.

In the above circumstances, the Board will complete the employability assessment required under section 23(3), and will provide a copy of that assessment to the worker. Thirty (30) days after the worker has been provided with a copy of the employability assessment, the Board will adjust the income continuity rate to the rate which best reflects the conclusions contained in the employability assessment regarding the worker's projected long-term earning capacity. However, the Board will not adjust the rate at this point if, during the 30-day period based on new evidence, the Board decides the employability assessment requires revision.

As part of the completion of the employability assessment and prior to adjusting the income continuity rate, the Board must investigate the worker's circumstances and must consider the impact of the compensable disability on the worker's decision to retire or not to participate in the rehabilitation process.

Permanent Disability Award Reopenings

Continuity of income payments will also be considered for workers who are already receiving a permanent disability award on the claim, where the Board has reopened the award decision and it is likely that the worker will receive a

significant increase in the award. As well, there must be evidence of a deterioration in the worker's medical condition which is likely to be permanent, and the worker must be experiencing a reduction in income during the period which is related to the reasons for the reopening. Benefit levels will be established in accordance with this policy.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WorkSafeBC website.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	ss.16 and 23(3) of the *Act*.
CROSS REFERENCES:	Suitable Occupation (policy item #40.12), and Vocational Rehabilitation - Employability Assessments – Temporary Partial Disability and Permanent Partial Disability (Item C11-89.00) of the *Rehabilitation Services & Claims Manual,* Volume II.
HISTORY:	February 1, 2020 – Revised policy to update terminology and to clarify when income continuity benefits are considered. June 1, 2009 – Delete references to Board officers and Board officers in Vocational Rehabilitation Services. March 3, 2003 - Amendments to reference a reopening of a permanent disability award, consequential to the *Workers Compensation Amendment Act (No. 2), 2002*. November 1, 2002 - Reformatted and revised policy to clarify that income continuity allowances will be considered for workers who are likely to receive a permanent partial disability award under section 23(3) of the *Act*. Replaces policy items #89.11 and #89.13 of the *Rehabilitation Services & Claims Manual,* Volume II. Applies to decisions made on or after November 1, 2002 on claims adjudicated under the *Act*, as amended by the *Workers Compensation Amendment Act, 2002.*
APPLICATION:	Applies on or after February 1, 2020.

In cases of minor disabilities, the Board may calculate the award without the benefit of a medical examination if this is considered unnecessary having regard to the medical evidence already on the claim. Except for those cases, the normal practice is for a section 23(1) assessment to be conducted for disability awards purposes by the Board or an authorized External Service Provider (see policy item #39.01).

Although the evaluation is not the only medical evidence that the Board may use, it will usually be the primary input.

The decision-making procedure for assessing entitlement to a permanent disability award for psychological impairment is discussed in policy item #39.01.

In those cases where the worker has a section 23(1) assessment, the Board is required to notify the worker indicating the results of the evaluation and the conclusions reached regarding the question of permanent disability award entitlement.

The final decision on the assessment of a permanent disability award under section 23(3) is made by the Disability Awards Committee.

Requests for the commutation of permanent disability awards are adjudicated by the Board. Before making a decision, it may be necessary to obtain vocational rehabilitation input.

EFFECTIVE DATE:	June 1, 2009 – Insert reference that a Board officer determines whether an actual or potential disability is accepted on the claim. Delete references to Board officer in Disability Awards, Medical Services and Consultant.
HISTORY:	October 1, 2007 – Revised to delete references to memos and memorandums. July 2, 2004 – Revisions to the role of Board officers applied to all decisions, including appellate decisions, made on or after July 2, 2004.
APPLICATION:	Applies on or after June 1, 2009.

#97.00 EVIDENCE

The term “onus” or “burden of proof” refers to who has the obligation to prove an issue in question. The workers compensation system in British Columbia operates on an inquiry basis, rather than an adversarial basis, so there is no onus or burden of proof on the worker or employer. The Board gathers the relevant evidence and determines whether it is sufficiently complete and reliable to arrive at a sound conclusion with confidence. If not, the Board considers what other evidence might be obtained, and must take the initiative in seeking further evidence.

The term “standard of proof” refers to the level of certainty required to prove an issue in question. For decisions respecting the compensation or rehabilitation of a worker, the standard of proof under section 99(3) of the *Act* is “at least as likely as not.” If, on weighing the available evidence, the disputed possibilities are evenly balanced then section 99(3) requires that the issue be resolved in accordance with that possibility which is favourable to the worker. For other decisions, the standard of proof is the balance of probabilities. Balance of probabilities means “more likely than not.”

It is important to distinguish between the standard of proof and the test for the issue in question, such as causation. For example, for a worker to be entitled to compensation for an injury, the worker’s employment has to be of causative significance in the occurrence of the injury, which means more than a trivial or insignificant aspect of the injury. The standard of proof applies to this determination, so the question for the Board is whether it is “at least as likely as not” that the worker’s employment was more than a trivial or insignificant aspect of the injury.

Although there is no burden of proof on the worker, the *Act* contains prerequisites for benefits. Compensation will not be paid simply because, for example, a telephone call is received from someone claiming to be a worker, who has been hurt, and was disabled for a certain number of days. Some basic evidence must be submitted by the worker to show that there is a proper claim. The extent of that basic evidence necessary, and the weight to be attached to it, is entirely in the hands of the Board.

It is therefore not uncommon to see that a claim will be denied when a worker, away from employment, begins to feel some pain and discomfort in the lower back, and seeking to find a reason for this condition, thinks back to the work being done over a period of time and concludes that the problem must have resulted from something which occurred on a certain day when certain heavy work was being performed. The question then arises whether there was anything other than the worker’s hindsight which would allow the Board to conclude that the work done some weeks or months previously had causative significance. It is at this point that investigation takes place and the evidence is weighed.

If the evidence does not support a finding it is "at least as likely as not" that any activity at work was of causative significance in the reported condition, at or near the time alleged by the worker, it can fairly be said that causation has not been established. The worker has simply failed to present those fundamental facts which bring the provisions of the *Act* into play.

EFFECTIVE DATE:	February 1, 2020
HISTORY:	February 1, 2020 – Amendments to provide guidance on the legal issues of standard of proof, evidence, and causation. June 1, 2009 – Delete references to officer and Adjudicator.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#97.10 Evidence Evenly Weighted

For decisions respecting the compensation or rehabilitation of a worker, the standard of proof under section 99(3) of the *Act* is "at least as likely as not."

Complaints are sometimes received at the Board that a worker has not been given the benefit of the doubt. Usually, these complaints relate to a situation in which the worker has a disability, but the issue is whether it is one arising out of or in the course of employment. The essence of the complaint is often that if there is some possibility that the injury arose out of the employment, the worker should be given the benefit of the doubt. For the Board to take that view, however, would be inconsistent with the terms of the *Act*. Where it appears from the evidence that two conclusions are possible, but that one is more likely than the other, the Board must decide the matter in accordance with that possibility that is more likely.

Under the terms of section 99(3), the Board is required to decide an issue in accordance with the possibility which is favourable to the worker where it appears that "the evidence supporting different findings on an issue is evenly weighted in that case". This applies only where there is evidence of roughly equal weight for and against the claim. It does not come into play where the evidence indicates that one possibility is more likely than the other. (23)

The Board, as a quasi-judicial body, must make its decisions according to the evidence or lack of evidence received, not in accordance with speculations unsupported by evidence. Section 99(3) of the *Act* applies when "the evidence supporting different findings on an issue is evenly weighted in that case." However, if the evidence before the Board does not support a finding that a particular condition can result from a worker's employment, there is no doubt on the issue; the Board's only possible decision is to deny the claim. If one speculates as to the cause of a condition of unknown origin, one might attribute it to the person's work or to any other cause, and one speculated cause is no doubt just as tenable as any other. However, the Board can only be concerned with possibilities for which there is evidential support and only when the evidence is evenly weighted does section 99(3) apply.

EFFECTIVE DATE: February 1, 2020
AUTHORITY: Section 99(3) of the *Act*.
HISTORY: February 1, 2020 – Amended to provide guidance on the legal issues of standard of proof, evidence, and causation.
March 3, 2003 – Updated to reflect revised provisions of section 99 of the *Act*.
APPLICATION: Applies to all decisions made on or after February 1, 2020.

#97.20 Presumptions

There are statutory presumptions in favour of workers or dependants already discussed in earlier chapters. These are as follows:

(1) In cases where the injury is caused by accident, where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment; and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment. (24)

(2) If the worker at or immediately before the date of disablement was employed in a process or industry mentioned in the second column of Schedule B, and the disease contracted is the disease in the first column of the schedule set opposite to the description of the process, the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved. (25)

(3) Where a deceased worker was, at the date of death, under the age of 70 years and suffering from an occupational disease of a type that impairs the capacity or function of the lungs, and where the death was caused by some ailment or impairment of the lungs or heart of non-traumatic origin, it shall be conclusively presumed that the death resulted from the occupational disease. (26)

(4)(a) Where a worker who is or has been a firefighter has contracted a disease set out in the *Act* or prescribed by the *Firefighters' Occupational Disease Regulation*, the disease must be presumed to be due to the nature of the worker's employment as a firefighter, unless the contrary is proved. (26a)

(4)(b) Where a worker is disabled as a result of a heart disease and was employed as a firefighter at or immediately before the date of disablement from the heart disease, the heart disease must be presumed to be due to the nature of the worker's employment as a firefighter, unless the contrary is proved. (26b)

(4)(c) Where a worker is disabled as a result of a heart injury and was employed as a firefighter at or immediately before the date of disablement from the heart injury, the heart injury must be

presumed to have arisen out of and in the course of the worker's employment as a firefighter, unless the contrary is proved. (26c)

(5) Where a worker who is an applicant as defined in the *Emergency Intervention Disclosure Act*, has obtained a testing order under that Act, and has contracted a communicable disease prescribed by the *Emergency Intervention Disclosure Regulation*, it must be presumed the communicable disease is due to the nature of the worker's employment, unless there is evidence to the contrary. (26d)

(6) Where a worker is or has been employed in an eligible occupation and is:

- exposed to one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, and

- has a mental disorder that is diagnosed by a psychiatrist or psychologist as a mental disorder recognized in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders at the time of the diagnosis as a mental or physical condition that may arise from exposure to a traumatic event,

the mental disorder must be presumed to be a reaction to the one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, unless the contrary is proved. (26e)

The *Act* contains no general presumption either in favour of the worker or against the claim.

EFFECTIVE DATE:	July 23, 2018
HISTORY:	Consequential amendments arising from the Bill 9 amendments to section 5.1 of the *Act*, were made effective July 23, 2018. May 1, 2017 – Adding to policy a reference to the firefighters' presumption and communicable disease presumption provided in the *Act.*
APPLICATION:	Applies on or after July 23, 2018.

#97.30 Medical Evidence

It is the responsibility of the Board to make all the decisions relating to the validity of a claim and to make all the decisions relating to compensation payments. This includes decisions relating to medical as well as other aspects of the claim.

This does not mean, of course, that a lay judgment is preferred to a medical opinion on a question of medical expertise. What it means is that the Board is responsible for the decision-making process, and for reaching the conclusions on the claim. But this will, of course, require an input of medical evidence, or sometimes other expert advice, on any issue requiring professional expertise.

In reaching conclusions on a medical question, the guide-rules are set out below.

EFFECTIVE DATE: June 1, 2009 – Delete references to Claims Adjudicator, Claims Officer, the Disability Awards Officer and the Adjudicator in Disability Awards.
APPLICATION: Applies on or after June 1, 2009

#97.31 Matter Requiring Medical Expertise

Where the matter is one requiring medical expertise, the decision must be preceded by a consideration of medical evidence (this term includes medical opinion or advice). Medical evidence might consist of a statement in the Form 8 Physician's First Report, (27) or some information or opinion from the attending physician, or it might consist of advice provided from a Board Medical Advisor or another doctor. It is for the Board to decide when medical evidence is needed, what kind of medical evidence is needed, and on what questions.

EFFECTIVE DATE: June 1, 2009 – Delete references to Claims Adjudicator and Claims Officer.
APPLICATION: Applies on or after June 1, 2009.

#97.32 Statement of Worker about His or Her Own Condition

A statement of a worker about his or her own condition is evidence insofar as it relates to matters that would be within the worker's knowledge, and it should not be rejected simply by reference to an assumption that it must be biased. Also, there is no requirement that the statement of a worker about his or her own condition must be corroborated. The absence of corroboration is, however, a ground for considering whether the worker should be interviewed by the Board, or telephone enquiries made, or whether anything relevant could be discovered by having the worker medically examined. A conclusion against the statement of the worker about his or her own condition may be reached if the conclusion rests on a substantial foundation, such as clinical findings, other medical or non-medical evidence, or serious weakness demonstrated by questioning the worker, or if the statement of the worker relates to a matter that could not possibly be within his or her knowledge.

EFFECTIVE DATE: June 1, 2009 – Delete references to Claims Adjudicator, Claims Officer and Board Medical Advisor.
APPLICATION: Applies on or after June 1, 2009.

#97.33 Statement by Lay Witness on Medical Question

A statement by a lay witness on a medical question may be considered as evidence if it relates to matters recognizable by a layperson; but not if it relates to matters that can only be determined by expertise in medical science. For example, a statement by a fellow worker that he or she saw the worker suffering from silicosis would be worthless; but a statement by a fellow worker reporting to have seen the worker bleeding from the forehead would be evidence of a head wound. Statements made by a first aid attendant or other categories of paramedical personnel can be considered insofar as they relate to matters within the normal experience or training of that category of paramedical personnel. But they must obviously be treated very cautiously if they go beyond that into areas requiring greater medical expertise, or if they conflict with the opinon of a doctor.

#97.34 Conflict of Medical Opinion

Where there are differences of opinion among doctors, or other conflicts of medical evidence, the Board must select from among them. The Board must not do it by automatically preferring the opinions of one category of doctors to another category, nor should it be done by counting heads, so many opinions one way and so many another. The Board must analyze the opinions and conflicts as best as possible on each issue and arrive at its own conclusions about where the weight of the evidence lies. If it is concluded that there is doubt on any issue, and that the evidence supporting different findings on an issue is evenly weighted in that case, the Board must follow the mandate of section 99 and resolve that issue in a manner that favours the worker. (28)

It should never be assumed that there is a conflict of medical opinion simply because the opinions of different doctors indicate different conclusions. A difference in conclusion between doctors may or may not result from a difference in medical opinion. For example, the difference could result from different assumptions of non-medical fact. Where there are two or more medical reports or memos on file from physicians, indicating different conclusions, the Board will not simply select among them as a first step. The Board should first think about why they are different and consider whether the relevant non-medical facts have been clearly established. The Board may seek advice to determine whether the best medical evidence has been obtained and, for example, find out if any appropriate medical procedures can be instituted that would assist in arriving at a more definite conclusion.

Where two or more medical reports or memos indicate a probable difference of medical opinion and the issue is serious, the matter will normally be discussed with the physicians involved.

The Board has no rule that states that the evidence of a physician is always to be preferred to that of a chiropractor or other qualified practitioner. Reports from both types of practitioner are acceptable evidence and are weighed on their merits. This principle applies even if the referral to the practitioner is contrary to Board policy. Should there, for example, be concurrent treatment by a physician

and a chiropractor, the Board might not pay for the chiropractor, but any chiropractor reports received must be weighed as evidence. They are not ignored just because the referral was unauthorized. (29)

The Board has no rule that states that the evidence of a physician is always to be preferred to that of a chiropractor or other qualified practitioner. Reports from both types of practitioner are acceptable evidence and are weighed on their merits. This principle applies even if the referral to the practitioner is contrary to Board policy. Should there, for example, be concurrent treatment by a physician and a chiropractor, the Board might not pay for the chiropractor, but any any chiropractor reports received must be weighed as evidence. They are not ignored just because the referral was unauthorized. (29)

EFFECTIVE DATE:	February 1, 2020
HISTORY:	February 1, 2020 – Amendment to provide guidance on the legal issues of standard of proof and evidence. June 1, 2009 – Delete references to officers. March 3, 2003 – Insert new wording of section 99.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#97.35 Termination of Benefits

Where a treating physician expresses an opinion that a worker is disabled from work by reason of a compensable disability, the Board may rely upon overall existing medical evidence from a doctor who has examined the worker or other substantive evidence on the file to reach a conclusion contrary to that opinion or may decide to carry out further investigation which may involve a Board medical examination.

EFFECTIVE DATE:	June 1, 2009 – Delete references to Claims Adjudicator, Claims Officer and Board physician.
APPLICATION:	Applies on or after June 1, 2009.

#97.40 Disability Awards

In cases of very minor disabilities, the Board may proceed to calculate a disability award without a section 23(1) evaluation, if it is unnecessary having regard to the medical evidence already available. Except for those cases, the normal practice is for a section 23(1) evaluation to be conducted for disability awards purposes by the Board or an External Service Provider.

It is the responsibility of the Board to classify the disability as a percentage of total disability. In doing this, it is proper for the Board to consider other factual and medical evidence as well as the section 23(1) evaluation report prepared by the Board or the External Service Provider. However, although the report of the Board or the External Service Provider is not the only medical input that the Board may use, it will usually be the primary input, and caution will be used in referring to any other medical opinion.

The section 23(1) evaluation report 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 the Board must adopt the percentage indicated by the section 23(1) evaluation. It is always open to the Board 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 #39.01.

In making a determination under section 23(1), the Board will enquire carefully into all of the circumstances of a worker's condition resulting from a compensable injury.

EFFECTIVE DATE:	June 1, 2009 – Delete references to officers in Disability Awards and officer.
HISTORY:	January 1, 2003 – References to prior Subjective Complaints policy removed. Applies to new claims received and all active claims that are currently awaiting an initial adjudication.
APPLICATION:	Applies on or after June 1, 2009.

#97.50 Rumours and Hearsay

Hearsay must only be used very cautiously as evidence, and rumour must not be used as evidence at all. But even rumour is often valuable as a lead to investigation.

#97.60 Lies

A lie may be ground for drawing an adverse inference with regard to the facts to which it relates. But it is not in itself ground for denying compensation, particularly when it relates to something not relevant to the claim at all.

#97.70 Surveillance

Section 96 of the *Act* provides the Board with authority to investigate claims for compensation. Under section 88 of the *Act*, the Board has authority to make necessary inquiries and to appoint others to make such inquiries.

The Board is required to gather the evidence necessary to adjudicate claims, and surveillance is one method to obtain such evidence. Surveillance is the discreet observation of a worker, and includes video-recording, audio-recording, and photographing the worker.

The Board conducts surveillance and uses surveillance evidence in compliance with applicable legislation, including the *Freedom of Information and Protection of Privacy Act* and the *Canadian Charter of Rights and Freedoms*.

Surveillance is a tool of last resort to be used when determining if a worker has engaged in fraud or misrepresentation where there is other existing evidence of fraud or misrepresentation and a strong likelihood the surveillance evidence will assist in establishing the fraud or misrepresentation.

Director or Vice-President approval is required to approve surveillance requests.

Surveillance evidence is assessed by the Board for accuracy and relevancy to the issues being decided, and is considered in conjunction with all other evidence.

The worker is given a reasonable opportunity to view and respond to surveillance evidence before the Board finalizes any decision based on that evidence.

EFFECTIVE DATE:	March 1, 2019
AUTHORITY:	Sections 88 and 96 of the *Act.*
CROSS-REFERENCES:	#97.00, *Evidence*; #99.00, *Disclosure of Information*; #99.23, *Unsolicited Information*; #99.35, *Complaints Regarding File Contents*.
HISTORY:	March 1, 2019 – Policy item added to address use of surveillance and treatment of surveillance evidence.
APPLICATION:	Applies on or after March 1, 2019.

#98.00 INVESTIGATION OF CLAIMS

In the majority of claims the issues are decided by reference to the information received in the worker's application and the employer's and medical reports. Any insufficiency in the information is usually made good by telephone, correspondence, or by informal interview. In a minority of claims, a more formal inquiry, or medical examination, may be necessary.

#98.10 Powers of the Board

Section 87 of the *Act* provides as follows:

> (1) The Board has the like powers as the Supreme Court to compel the attendance of witnesses and examine them under oath, and to compel the production and inspection of books, papers, documents and things.
>
> (2) The Board may cause depositions of witnesses residing in or out of the Province to be taken before a person appointed by the Board in a similar manner to that prescribed by the Rules of the Supreme Court for the taking of like depositions in that court before a commissioner.

Usually, the Board receives the willing cooperation of all concerned, and the power of subpoena is not used as a normal routine.

EFFECTIVE DATE: March 3, 2003 (as to new wording of section 87)
APPLICATION: Not applicable.

#98.11 Powers of Officers of the Board

Section 88(1) provides that "The Board may act on the report of any of its officers, and any inquiry which it is considered necessary to make may be made by an officer of the Board or some other person appointed to make the inquiry, and the Board may act on his or her report as to the result of the inquiry."

The officer and every other person appointed to make an inquiry has for the purposes of an inquiry under subsection (1) all the powers conferred upon the Board by section 87. (30)

Every officer or person authorized by the Board to make examination or inquiry under this section may require and take affidavits, affirmations or declarations as to any matter of the examination or inquiry, and take affidavits for the purposes of this *Act*, and in all those cases to administer oaths, affirmations, and declarations and certify that they were made. (31)

The Board has ruled that, for the purpose of section 88, employees of the Board, who, in the performance of their prescribed duties, do those things which are reserved to be done by an officer of the Board, are, and have been, for matters arising out of Part 1 of the *Act*, appointed officers of the Board.

EFFECTIVE DATE: March 3, 2003 (as to new wording of section 88)
APPLICATION: Not applicable.

#98.12 Examination of Books and Accounts of Employer

Section 88(3) provides that "The board, an officer of the board or a person authorized by it for that purpose, may examine the books and accounts of every employer and make any other inquiry the board considers necessary to ascertain whether an industry or person is within the scope of this Part. For the purpose of the examination or inquiry, the board or person authorized to make the examination or inquiry may give to the employer or the employer's agent notice in writing requiring the employer to bring or produce before the board or person, at a place and time to be mentioned in the notice, which time must be at least 10 days after the giving of the notice, all documents, writings, books, deeds and papers in the possession, custody or power of the employer touching or in any way relating to or concerning the subject matter of the examination or inquiry referred to in the notice, and every employer and every agent of the employer named in and served with the notice must produce at the time and place required all documents, writings, books, deeds and papers according to the tenor of the notice."

An employer and every other person who obstructs or hinders the making of an examination or inquiry mentioned in subsection (3), or who refuses to permit it to be made, or who neglects or refuses to produce the documents, writings, books

deeds, and papers at the place and time stated in the notice mentioned in Subsection (3), commits an offence. (32) The maximum fine for committing this offence is set out in Appendix 6.

#98.13 Medical Examinations and Opinions

The authority of the Board to require a worker to be medically examined is dealt with in Item C10-73.00, *Direction, Supervision, and Control of Health Care*.

The medical resources of the Board cannot be used to provide a medical opinion to anyone on request. The Board will, therefore, decline to provide a medical opinion if the request does not come from someone authorized to make the request. Those authorized are Board staff whose duties require an input of medical advice.

A Workers' Adviser and an Employers' Adviser have access to medical opinions already on file, but have no right to require any further medical opinions to be produced.

EFFECTIVE DATE:	June 1, 2009 – Delete references to Medical Advisors and officers.
HISTORY:	Consequential amendments arising from changes to Chapter 10, *Medical Assistance, Rehabilitation Services and Claims Manual*, were made effective January 1, 2015. March 3, 2003 – Deletion of references to Review Division and Appeal Division.
APPLICATION:	Applies on or after June 1, 2009.

#98.20 Conduct of Inquiries

The Board operates on an inquiry as opposed to an adversary system. It does not, like a court operating under the adversary system, decide between the arguments and evidence submitted by two opposing parties at a hearing and limit itself to the material presented at that hearing. While the judge under the adversary system has little or no authority to carry out investigations, the Board is obliged by section 96 of the *Act* both to investigate and to adjudicate claims for compensation. Oral hearings or interviews are not always conducted before a decision is reached and, when they are conducted, provide only part of the information relied on by the Board. The other written reports on the file will also be considered. Such hearings are informal in nature and not subject to the formal rules of evidence and procedure followed in court hearings.