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Update 2022 – 3

**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 2022 – 2.

The revised pages are amendments for:

- Item C3-14.10, *Serious and Wilful Misconduct*
- Policy item # 115.30, *Experience Rating Cost Exclusions*

This update also includes the pages to update your paper *Manual* for housekeeping amendments to the following policy, which were updated in our online *Manual* in February, 2022:

- Item C8-56.00, *Compensation on the Death of a Worker – Calculation of Compensation – Dependent Spouse with Children*

A summary is attached and the amended pages are included as part of the package effective **June 1, 2022**.

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

Ian Shaw
Head of Law & Policy

Attachments

Rehabilitation Services & Claims Manual, Volume II

SUMMARY OF AMENDMENTS – Update 2022 – 3

Chapter 3	Pages 1 to 3	Item C3-14.10 amended
Chapter 8	Pages 5 to 7	Item C8-56.00 housekeeping amendment
Chapter 17	Pages 19 to 22	Policy item #115.30 amended

RE: Serious and Wilful Misconduct**ITEM: C3-14.10**

BACKGROUND

1. Explanatory Notes

This policy provides guidance for determining compensability for an injury or death due to the serious and wilful misconduct of a worker.

2. The Act

Section 134, in part:

- (1) If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.
- (2) As an exception to subsection (1), if the injury is attributable solely to the serious and wilful misconduct of the worker, compensation is not payable unless the injury results in the worker's death or serious or permanent disablement.

...

POLICY

Before section 134(2) can be considered, it must first be determined under section 134(1) that the worker's personal injury or death arose out of and in the course of the worker's employment. Item C3-14.00 is the principal policy used for making this determination.

In weighing the evidence, the actions or conduct of the worker may induce the Board to conclude that the worker's injury or death did not arise out of and in the course of the worker's employment under section 134(1). If such a conclusion is reached, the claim is disallowed, and section 134(2) is not considered. This is so even in the event of death or serious or permanent disablement.

If it is determined that the worker's injury or death did arise out of and in the course of the worker's employment and there is an indication that misconduct of the worker played a role in the worker's injury or death, section 134(2) is then considered.

A. Serious and Wilful Misconduct by the Worker

The first question to be considered is, was the worker's misconduct serious and wilful?

A worker engages in serious and wilful misconduct if the worker deliberately and intentionally violates rules, regulations or laws known to the worker. Serious and wilful misconduct is a voluntary act by a worker with reckless disregard for the worker's own safety and which the worker should have recognized as having the potential to result in personal injury.

If a worker's misconduct was not serious and wilful, the injury that arose out of and in the course of the worker's employment is compensable.

B. Attributable Solely to the Worker's Serious and Wilful Misconduct

If a worker's misconduct was serious and wilful, the second question to be considered is, was the injury attributable solely to the worker's serious and wilful misconduct?

The word "solely" in this situation means that, without the worker's misconduct, the injury would not have resulted.

If a worker's injury is not attributable solely to the worker's serious and wilful misconduct, compensation is payable.

C. Death or Serious or Permanent Disablement

If a worker's injury is attributable solely to the worker's serious and wilful misconduct, the third question to be considered is, did the worker's injury result in death or serious or permanent disablement?

In this context, the word "serious" is used in a physical rather than an economic sense. For example, if a worker has suffered a sprained wrist or finger which causes only two or three weeks of lost wages, this may not be considered as a serious disablement even though the loss of earnings may cause a serious financial problem for the worker. If an injury results in a prolonged disability, however, it may be regarded as serious even though the initial injury appears minor.

If a worker's injury that was attributable solely to the worker's serious and wilful misconduct did not result in death or serious or permanent disablement, it is not compensable, even though it also arose out of and in the course of the worker's employment.

D. Employer's Experience Rating

Where the injury attributable solely to the serious and wilful misconduct of the worker resulted in death or serious or permanent disablement, the cost of all compensation paid on the claim is excluded from the employer's experience rating.

EFFECTIVE DATE:	June 1, 2022
AUTHORITY:	Section 134(2) of the <i>Act</i> .
CROSS REFERENCES:	Item C3-14.00, <i>Arising Out of and In the Course of a Worker's Employment</i> ; Item C3-17.00, <i>Deviations from Employment</i> ; Policy item #115.30, <i>Experience Rating Cost Exclusions</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	June 1, 2022 – Policy change to exclude from experience rating the cost of all compensation paid on claims where section 134(2) of the <i>Act</i> applies. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. July 1, 2010 – This policy replaced former policy item #16.60, <i>Serious and Wilful Misconduct</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. The number of weeks of wage-loss benefits that must be paid before the costs of compensation will be excluded from an employer's experience rating changed from 13 weeks to 10 weeks in former policy item #16.60 effective September 28, 2002.
APPLICATION:	This Item applies to all decisions, including appellate decisions made on or after June, 1, 2022.

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- (b) the following amount per month for each child dependant beyond two in number.

January 1, 2021	—	December 31, 2021	\$373.66
January 1, 2022	—	December 31, 2022	\$391.05

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

- (II) The Board then deducts an amount equal to 50% of the federal benefits payable to or for those dependants.

The example below describes the monthly payment that would be payable for a dependent spouse and three child dependants, where the worker died on April 6, 2020, with an average net earnings of \$60,000 per year.

(I) The Board determines 100% of the monthly rate of compensation, plus the additional amount for extra dependants

A.	Monthly permanent total disability benefits rate at date of death	$90\% \times \frac{60,000}{12}$	=	4,500
B.	Additional amount for third child dependant under section 171(3)(b)	See section 171(3)(b)	=	391.05
C.	Total monthly compensation rate (A plus B) and	A + B	=	4,891.05
	Maximum compensation entitlement (Board and federal benefits)	$4,500 + 391.05$	=	4,891.05

(II) The Board deducts an amount equal to 50% of federal benefits

D.	Federal benefits for dependent spouse	CPP rate set each year	=	638.28
E.	Federal benefits for child dependants	3 x CPP rate set each year (3 x 255.03)	=	765.09

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F.	Total federal benefits (dependent spouse and children)		D + E	=	1,403.37
G.	50% of total federal benefits	50% x F (50% x 1,403.37)		=	701.69
H.	Total Board monthly payments payable (C less G)	C 4,871.21	- G 701.69	=	4,169.52

3. Change in Federal Benefits

If the Board receives evidence of a change in a dependant's entitlement to federal benefits, the amount of federal benefits deducted from the compensation for that dependant is adjusted accordingly. For instance, if the Board receives evidence that children's benefits under the Canada Pension Plan have been terminated, the amount of federal benefits deducted from the compensation for that child will be adjusted. The adjustment takes effect as of the date of the change in federal benefits.

4. Minimum Monthly Payments

The minimum monthly payment under this Item must not be less than the amount that would be payable if, at the date of death, the deceased worker had the following average earnings:

January 1, 2021	—	December 31, 2021	\$40,256.48
January 1, 2022	—	December 31, 2022	\$42,130.24

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

5. Commencement of Compensation

Compensation under this Item commences on the day after the date of the worker's death.

6. Duration and Recalculation of Compensation

Compensation for a dependent spouse is payable for life.

Compensation for a dependent spouse with one or more child dependants is recalculated in accordance with Item C8-57.00 as each child ceases to meet the requirements, described in Item C8-53.20, to be eligible for compensation as a "child" of the deceased worker.

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Compensation for a dependent child is recalculated under Item C8-57.00 if the dependent spouse dies before the children cease to meet the requirements, as described in Item C8-53.20, to be eligible for compensation as “children” of the deceased worker.

EFFECTIVE DATE:	June 30, 2002
AUTHORITY:	Sections 165, 168, and 171 of the <i>Act</i> .
CROSS REFERENCES:	Item C8-53.00, <i>Compensation on the Death of a Worker – Definitions – Meaning of “Dependant” and Presumptions of Dependency</i> ; Item C8-53.10, <i>Compensation on the Death of a Worker – Definitions – Meaning of “Spouse”</i> ; Item C8-53.20, <i>Compensation on the Death of a Worker – Definitions – Meaning of “Child” or “Children”</i> ; Item C8-53.30, <i>Compensation on the Death of a Worker – Definitions – Meaning of “Federal Benefits”</i> ; Item C8-56.70, <i>Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit</i> ; Item C8-57.00, <i>Compensation on the Death of a Worker – Recalculation of Compensation on a Change in Circumstances, of the Rehabilitation Services & Claims Manual, Volume II.</i>
HISTORY:	February 2022 – Housekeeping change. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. November 24, 2011 – Housekeeping amendments made in accordance with legislative amendments to the then <i>Act</i> . June 30, 2002 – Replaced policy items #55.00, #55.20, #55.21, #55.22, #55.26, #55.60 and #61.60 of the <i>Rehabilitation Services & Claims Manual, Volume II.</i>
APPLICATION:	This Item applies to the death of a worker on or after June 30, 2002.

Pneumoconioses not specifically diagnosed

Heart disease

Cancer

Hand-arm vibration syndrome, vinyl chloride induced Raynaud's phenomenon, disablement from vibrations

(see policy item #113.20)

6. Costs where section 134(2) applies (see Item C3-14.10).
7. Costs from accidents substantially due to personal illness, e.g. epilepsy (see Item C3-16.00).
8. Injuries covered by Items C11-88.10, C11-88.40, and C11-88.50.
9. The situations covered by policy item #115.31 and policy item #115.32 below.
10. The situation covered by policy item #115.33.
11. The costs of certain compensable consequences that occur at a place, or en route to or from a place, of treatment, surgery, or Board-related assessment, as set out in policy item #115.34.

The decision whether a claim falls within one of the exclusions will usually be made by the Board. In the case of third party actions (Exclusion 1), a Board solicitor makes the decision.

EFFECTIVE DATE:

June 1, 2022

HISTORY:

June 1, 2022 – policy amended to update claim costs to be excluded from consideration for experience rating purposes as set out in Item C3-14.10, *Serious and Wilful Misconduct*.

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

January 1, 2016 – policy amended to add new type of claim costs to be excluded from consideration for experience rating purposes, as set out in policy item #115.34, *Experience Rating Exclusions for Certain Compensable Consequences*.

August 1, 2010 – Consequential amendments to address whether an employer should receive cost relief where a worker continues to receive temporary wage-loss benefits for a compensable disability when a subsequent non-compensable incident delays the worker's recovery from the compensable disability.

June 1, 2009 – Deleted references to the Review Division, Medical Review Panel and the Worker and Employer Services Division.

March 1, 2005 – Updated language as to the use of the phrase "rate group", consistent with rate-making system in *Assessment Manual*; updated and incorporated cross-references to policy items #113.20 and C11-88.10, to make all items consistent and accurate. This policy

continues the substantive requirements as they existed prior to the effective date. Applied to all decisions on or after March 1, 2005. March 18, 2003 – “Discount”, “Surcharge” and the numerical reference to the policy in then Item AP1-42-1 in the *Assessment Manual* were incorporated.

APPLICATION: This policy applies to all decisions, including appellate decisions, made on or after June 1, 2022.

#115.31 *Injuries or Aggravations Occurring in the Course of Treatment, Surgery, and Board-related Appointment, or Travel Thereto*

If there is an aggravation of an injury or a subsequent injury arising out of treatment, surgery, Board-related assessment, or travel for exceptional medical treatment or examination for the primary injury, and the aggravation or subsequent injury is acceptable on the claim, compensation costs resulting from this secondary problem will be charged in the usual way. Exclusion from the employer’s experience rating will only occur if:

1. the original injury was one that would not have been expected to result in death or the permanent disability, or the increased disability, that occurred, and
2. the aggravation or subsequent injury occurred beyond the operations of the employer, and if the worker required transportation to a hospital or other place of medical treatment, after the employer had fulfilled the obligations under section 159 (see Item C10-83.30), and
3. the aggravation or subsequent injury resulted in permanent disability or death.

The application of relief is limited to the permanent disability compensation reserve established for a fatality or the permanent disability, or portion of the permanent disability, that resulted from the aggravation or subsequent injury arising out of treatment, surgery, Board-related assessment, or travel for exceptional treatment or examination.

Consideration is automatically given by the Board to excluding the costs from experience rating in these cases. No request from the employer is required. The employer will be advised of the decision in writing and of the relevant review and/or appeal rights.

EFFECTIVE DATE: January 1, 2016
AUTHORITY: Section 247 of the *Act*.
CROSS REFERENCES: Item C3-22.00, *Compensable Consequences*;
Item C3-22.10, *Compensable Consequences – Travel* (esp. for meaning of travel for exceptional treatment or examination);
Item C10-83.30, *Date of Injury Transportation*;
Policy item #115.30, *Experience Rating Cost Exclusions*;

Policy item #115.34, *Experience Rating Exclusions for Certain Compensable Consequences*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY:

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

January 1, 2016 – Policy amended to clarify that the costs of injuries or aggravations arising out of surgery, Board-related assessment, and travel for exceptional medical treatment or examination will be excluded from an employer's experience rating per injuries or aggravations arising out of treatment.

January 1, 2015 – Consequential amendments were made effective, arising from changes to Chapter 10, *Medical Assistance*, of the *Rehabilitation Services & Claims Manual*, Volume II.

June 1, 2009 – Policy updated to reflect the wording of decision-makers, departments, appellate bodies, and external agencies.

March 3, 2003 – Amended to delete references to the Review Board and the Appeal Division.

June 30, 2002 – Housekeeping changes were made to update terminology.

APPLICATION:

This policy applies to all decisions made on or after January 1, 2016.

#115.32 *Claims Involving a Permanent Disability and a Fatality*

ER does not include the actual cost of the fatal claims experienced by an employer.

Rather, it includes for each claim the average cost for all fatal claims in the year.

A worker in receipt of permanent disability benefits may die as a result of the injury or disease accepted under the claim. If compensation is payable to dependants, the cost otherwise included in ER may be reduced to the extent set out below:

1. Where the average cost of compensation for a fatality is the same or less than that of the permanent disability benefits, the total cost of the compensation for the fatality is excluded.
2. Where the average cost of compensation for a fatality is greater than that of the permanent disability benefits, a portion of the cost of the compensation for the fatality equal to the reserve charged to the employer for the permanent disability benefits is excluded.

#115.33 *Claims Relating to Subsequent Non-Compensable Incidents*

A worker may continue to receive temporary wage-loss benefits where recovery from a compensable disability is delayed due to a subsequent non-compensable incident.

As set out in policy item #34.55, the Board estimates when the worker would have reached maximum medical recovery. The Board continues to pay wage-loss benefits for the period that the Board estimates the worker would have taken to reach maximum medical recovery from the compensable injury had the subsequent non-compensable incident not occurred.

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 is due to the

compensable injury or the subsequent non-compensable incident. If the disability is due to the compensable injury, wage-loss benefits may be continued.

If the delay in recovery is due to the subsequent non-compensable incident, the cost of compensation associated with the delay in recovery beyond the estimated date for terminating temporary wage-loss benefits is excluded from the employer's experience rating. These costs will also not be charged to the employer's rates group, but will be spread across all rate groups.

Claims costs associated with permanent disability benefits would not be relieved under this policy.

EFFECTIVE DATE: August 1, 2010
HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION: This policy applies to all decisions made on or after August 1, 2010.

#115.34 *Experience Rating Exclusions for Certain Compensable Consequences*

A. At Places of Treatment, Surgery, Board-Related Appointment, and Vocational Rehabilitation

The Board considers places of treatment, surgery, appointment (including pre-arranged appointments at the Board or Workers' Compensation Appeal Tribunal), or Vocational Rehabilitation that a worker attends because of a compensable injury analogous to the worker's place of employment.

A further injury, increased disablement, disease, or death arising at such a location may therefore be compensable, if the Board has determined that the parameters set out in Item C3-22.00 were met. This includes a further injury sustained by a worker stumbling down the stairs at the location in question while en route to the pre-arranged appointment.

The Board includes most costs of the compensable consequences that occur at the place of treatment, surgery, and pre-arranged appointment (including appointments at the Board or Workers' Compensation Appeal Tribunal) when calculating an employer's experience rating.

There are two exceptions. One is for compensable consequences that occur at the location in question, but which are not a direct consequence of the treatment, surgery, or Board-related assessment itself, or actually caused by the condition resulting from the compensable injury. The Board normally excludes the costs of these compensable consequences from the employer's experience rating.

The second exception is for the compensable consequences of Vocational Rehabilitation. With respect to Board-approved Vocational Rehabilitation plans, the