Policy, Regulation and Research Division

Mailing Address
PO Box 5350 Stn Terminal
Vancouver BC V6B 5L5

Location
6951 Westminster Highway
Richmond BC

Telephone 604 276-5160
Fax 604 279-7599

May 2020 Update 2020 – 4

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 – 3.

This update contains minor formatting changes as well as housekeeping amendments to non-policy sections of the policies.

A summary is attached and the amended pages are included in this package.

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 2020 – 4

Chapter 3	Pages 3 to 4	Item C3-12.00, housekeeping amendment
Chapter 5	Pages 15 to 16	Policy item #34.53, housekeeping amendment
Chapter 6	Pages 1 to 2	Policy item #36.10, housekeeping amendment
	Pages 29 to 30	Policy item #42.20, housekeeping amendment
	Pages 53 to 54	Policy item #46.05, housekeeping amendment
Chapter 7	Pages 9 to 10	Policy item #48.42, housekeeping amendment
	Pages 13 to 14	Policy item #48.48, housekeeping amendment
	Pages 19 to 20	Policy item #49.14, housekeeping amendment
	Pages 27 to 28	Policy item #51.20, housekeeping amendment
Chapter 8	Pages 1 to 2	Item C8-52.00, housekeeping amendment
	Pages 3 to 4	Item C8-53.00, housekeeping amendment
	Page 5	Item C8-57.00, housekeeping amendment
Chapter 9	Pages 3 to 4	Policy item #65.02, housekeeping amendment
	Pages 13 to 14	Policy item #67.20, housekeeping amendment
	Pages 19 to 20	Policy item #67.50, housekeeping amendment
	Pages 33 to 34	Policy item #69.00, housekeeping amendment
Chapter 11	Pages 1 to 2	C11-88.10, housekeeping amendment
	Pages 1 to 4	C11-89.00, this policy was inadvertently omitted in the April 6, 2020 update package
Chapter 12	Pages 1 to 2	Policy item #93.10, housekeeping amendment
	Pages 5 to 6	Policy item #93.22, housekeeping amendment
	Pages 11 to 12	Policy item #94.10, housekeeping amendment
	Pages 21 to 24	Policy item #96.00, housekeeping amendment
		Policy item #96.10, housekeeping amendment
	Pages 37 to 40	Policy item #98.10, housekeeping amendment
		Policy item #98.11, housekeeping amendment
	Pages 43 to 44	Policy item #99.00, housekeeping amendment
	Pages 51 to 52	Policy item #99.24, housekeeping amendment
		Policy item #99.31, housekeeping amendment
	Pages 59 to 62	Policy item #100.00, housekeeping amendment
		Policy item #100.12, housekeeping amendment
		Policy item #100.14, housekeeping amendment
		Policy item #100.20, housekeeping amendment
		Policy item #100.30, housekeeping amendment
	Pages 65 to 66	Policy item #100.71, housekeeping amendment
		Policy item #100.73, housekeeping amendment

Chapter 13	Page 3	Item C13-102.00, housekeeping amendment
Chapter 15	Pages 1 to 2	Policy item #109.10, housekeeping amendment Policy item #109.20, housekeeping amendment
Chapter 16	Pages 9 to 10	Policy item #111.30, housekeeping amendment
Chapter 17	Pages 3 to 4	Policy item #113.20, housekeeping amendment
	Pages 17 to 18	Policy item #115.10, housekeeping amendment

4. Physiological changes caused by explosion.
5. Sprains and strains.
6. Damaged cartilage or ligaments.
7. Dislocation of the bones at a joint.
8. Burns caused by a single incident of a chemical spilled on the skin.

The following are examples of diseases:

1. A disability caused by the gradual absorption of a chemical through the skin, by inhalation, or otherwise.

2. Cancer.

3. Respiratory disease such as asbestosis.

4. Contagious disease such as tuberculosis.

The following are examples of physiological changes that can be classified as either an injury or a disease, depending on the circumstances:

1. Infections. An infection incidental to a compensable injury is treated as part of the injury, otherwise it is classified as a disease.

2. Hearing loss. Hearing loss that results from an explosion is classified as an injury. Hearing loss that results from exposure to noise over a period of time or by infection is classified as a disease.

3. Disablement from Vibrations

   a) Instant disablement of a worker that results from vibrations of a traumatic nature, such as an explosion, is classified as an injury.

   b) Instant disablement of a worker, for example some sudden breakdown in the worker's system, that results from exposure to vibrations over a period of time, is classified as an injury.

   c) A gradual deterioration in a worker's condition that results from exposure to vibrations over a period of time is classified as a disease.

4. Heart Conditions

   a) Physiological changes of the heart attributed to a specific event or cause, or to a series of specific events or causes are classified as injuries.

b) Physiological changes of the heart involving a gradual onset and not attributed to a specific event or cause, or to a series of specific events or causes, are classified as diseases.

EFFECTIVE DATE:	July 1, 2010
AUTHORITY:	Section 134(1) of the *Act.*
CROSS REFERENCES:	Item C3-22.30, *Compensable Consequences – Psychological Impairment*; Item C3-23.00, *Replacement and Repair of Personal Possessions – Section 161(1)*; Item C3-24.00, *Section 135 – Mental Disorders*; Item C3-24.10, *Section 135(2) – Mental Disorder Presumption*; Chapter 4, *Occupational Disease*; Item C4-25.10, *Has a Designated or Recognized Occupational Disease*, of the *Rehabilitation Services & Claims Manual*, Volume II. Schedule 1 of the *Act.*
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. This policy resulted from the consolidation of former policy items #12.00, #13.00, #13.10, #13.12, #13.20, and #14.20 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	This item applies to all claims for injuries occurring on or after July 1, 2010.

EFFECTIVE DATE: March 3, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Changes were made regarding reference to Review Division and 75-day period for the Board reconsiderations.

#34.54 When is the Worker's Condition Stabilized

When a worker is medically examined to assess the degree of impairment, the examining doctor must first determine whether the worker's condition has stabilized. The examining doctor will decide whether:

(a) the condition has definitely stabilized;

(b) the condition has definitely not yet stabilized;

(c) the doctor is unable to state whether or not the condition has definitely stabilized and

(i) there is a likelihood of minimal change; or

(ii) there is a likelihood of significant change.

The examining doctor may be unable to fit the worker's condition exactly into one of the categories discussed above. In such a case, the doctor should simply state the findings in terms of the categories as well as possible, and the question whether the condition is temporary or permanent will have to be dealt with by the Board on the merits of the case.

Having regard to the examining doctor's report and any other relevant medical evidence, the Board will then decide whether or not the worker's condition is permanent to the extent that permanent disability benefits should be assessed.

In the case of (a), the condition is considered permanent, the permanent disability is immediately assessed. A condition will be deemed to have plateaued or become stable where there is little potential for improvement or where any potential changes are in keeping with the normal fluctuations in the condition which can be expected with that kind of disability. In the case of (b), the condition is still temporary and the worker will be maintained on wage-loss benefits under section 191 or 192 of the *Act*.

In the situations where the examining doctor in (c)(i) above feels there is only a potential for minimal change, the condition will usually be considered as permanent and the permanent disability benefits established immediately on the basis of the prognosis. This approach will be particularly helpful where the disability is itself minor.

The following guidelines operate in (c)(ii) above if there is a potential for significant change in the condition.

1. If the potential change is likely to resolve relatively quickly (generally within 12 months), the condition will be considered temporary and the worker maintained on wage-loss benefits under section 191 or section 192 of the *Act*, and a further examination will be scheduled.

2. If the potential change is likely to be protracted (generally over 12 months), the condition will be considered permanent, and the permanent disability assessed, and the permanent disability benefits will be paid immediately on the worker's present degree of disability, and the claim will be scheduled for future review.

EFFECTIVE DATE: June 1, 2009
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted references to Board officers.
March 3, 2003 – Deleted reference to pension review.
APPLICATION: Applies on or after June 1, 2009.

#34.55 Subsequent Non-Compensable Incidents

If a subsequent non-compensable incident occurs at a time when a worker is still recovering from a compensable injury, the following principles apply.

A subsequent non-compensable incident may include:

- sustaining a non-compensable injury, condition, disease, or disability; or

- undergoing surgery, tests or other treatment for a non-compensable injury, condition, disease, or disability.

In the event that a worker temporarily suspends treatment for a compensable injury because of personal reasons, such as a family emergency or a vacation, this would not be considered a subsequent non-compensable incident.

The Board is only authorized to pay for disability that is caused by an employment-related injury and only to the extent of that disability. For this reason, the Board will not pay for periods of disability caused by a subsequent non-compensable incident.

If a worker is still disabled by a compensable injury when a subsequent non-compensable incident occurs, the Board estimates when the worker would have reached maximum medical recovery. The Board then continues to pay wage-loss benefits for the period that the Board estimates the worker would have taken

CHAPTER 6

PERMANENT DISABILITY BENEFITS

#36.00 INTRODUCTION

The Board pays permanent disability benefits if a worker fails to completely recover from a work-related injury or occupational disease, and is left with a permanent residual disability. The entitlement to permanent disability benefits commences at the point when the worker's temporary disability under the claim ceases and the condition stabilizes. The permanent disability may be total (section 194) or partial (sections 195 and 196).

Permanent disability benefits are calculated on the basis of a worker's long term "average net earnings". The computation of long term average net earnings is dealt with in Chapter 9.

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

#36.10 Transitional Provisions for Permanent Disability Benefits (see Chapter 1, policy item #1.03)

The rules for determining whether the law and policy in effect immediately prior to June 30, 2002 (subject to subsequent amendments) apply, or those in effect on or after that date, in relation to permanent disability benefits for injured workers, are set out in policy item #1.03.

EFFECTIVE DATE: January 30, 2002
AUTHORITY: Section 229 of the *Act*.
CROSS REFERENCES: Policy item #1.03, *Scope of Volume I and II in Relation to Compensation for Injured Workers*, 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.

#36.20 Canada Pension Plan Disability Benefits

Section 202 of the *Act* provides:

(1) This section applies to a worker who receives

(a) a periodic payment of compensation under section 194(1), 195(1) or 196(1) *[compensation for permanent disability]* in respect of an injury, and

(b) a disability benefit under the *Canada Pension Plan* in respect of the injury.

(2) Subject to sections 194(2), 195(2) and 198(5) *[minimum compensation payments]*, the Board must deduct from a periodic payment referred to in subsection (1)(a), an amount that equals 50% of any disability benefit paid as referred to in subsection (1)(b).

The Board deducts applicable Canada Pension Plan ("CPP") disability benefits from the worker's permanent disability benefits where the injury occurs on or after June 30, 2002. Where a worker was injured before June 30, 2002 and the permanent disability first occurred on or after June 30, 2002, CPP disability benefits paid to the worker for the same injury will not be deducted from the worker's permanent disability benefits.

If a worker is paid CPP disability benefits for dependent children, the Board does not deduct CPP disability child benefits from the worker's permanent disability benefits.

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

#36.21 Confirmation of CPP Disability Payments

The Board will advise a worker of the legislative requirement that CPP disability benefits be deducted from the worker's permanent disability benefits. To ensure that only the portion of CPP disability benefits related to the injury is deducted from the amount the Board pays for a worker's permanent disability, the Board needs information from the department continued under the *Department of Employment and Social Development Act* (Employment and Social Development Canada – "ESDC") confirming that the worker is receiving CPP disability benefits, the effective dates (start and end dates), the medical condition(s) for which CPP disability benefits are being paid, and the benefit amount. Workers are responsible for providing CPP information to the Board.

The worker's obligation to provide information to the Board to administer the claim is discussed in policy item #93.26.

The Board will also advise a worker of the obligation to provide necessary CPP information and the consequences of failing to comply. If a worker fails to provide the necessary CPP information, the Board may reduce or suspend the worker's permanent disability periodic payments as discussed in policy item #93.26.

EFFECTIVE DATE: March 3, 2003
CROSS REFERENCES: Policy item #113.10, *Investigation Costs*, 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.
March 3, 2003 – Amended regarding references to Review Division and Workers' Compensation Appeal Tribunal.

#43.00 DISFIGUREMENT

Section 190 of the *Act* provides that all compensation for worker disability is subject to sections 230, 231, 232, and 233.

Section 199 of the *Act* provides:

> If a worker experiences a serious and permanent disfigurement that the Board considers capable of impairing the worker's earning capacity, the Board may pay a lump sum in compensation and may do so even if the amount the worker was earning before the injury has not been reduced.

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

#43.10 Requirements for Disfigurement Compensation

Section 199 establishes the following requirements:

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

2. The disfigurement must be "serious". No permanent disfigurement compensation 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 considers the age and occupation of the worker, the visibility and extent of the disfigurement and any other relevant circumstances. Since section 199 states that the amount the worker is currently earning does not have to be reduced, this requirement is concerned with the worker's long-term earning capacity.

If there is disfigurement as well as a permanent disability, the worker may receive compensation for both. Subject to the Board applying section 230(2) of the *Act* (see policy item #45.00), the compensation for the permanent disability is a

periodic payment, and the compensation for disfigurement a lump sum. These amounts must be assessed separately.

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

The ultimate aim of disfigurement compensation and permanent disability benefits is to pay for loss of earning capacity. The worker should not receive double compensation for the same loss. Compensation under section 199 is not granted for something which is directly covered by permanent disability benefits, for example, the deformity caused by the normal appearance of an amputated limb. Disfigurement compensation may be considered, where the appearance of an impairment for which permanent partial disability benefits have been granted, is disfiguring to an exceptional degree.

If the worker receives permanent disability benefits of 100% under section 195(1), or for total unemployability under section 196(3), there is no additional loss of earning capacity which can form the basis for disfigurement compensation under section 199.

If psychological disability results from disfigurement, consideration will be given to permanent disability benefits under section 195(1) or section 196(3) following the normal practices for such compensation (see Item C3-22.30).

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

#43.20 Amount of Disfigurement Compensation

In calculating the amount of compensation to pay for disfigurement, the guidelines set out below apply:

1. Points are assigned to each of five factors assessed individually according to the table set out below. The assessment will normally be based on photographs of the worker but there may also be a visual examination of the worker in exceptional cases. The Board will give reasons for the points assigned to each factor.

C. READJUSTMENTS FOR WORKERS WHO WERE 65 YEARS OF AGE AT THE TIME OF APPLICATION

When a worker, whose permanent disability benefits were adjusted using section 24 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 or section 203(5)(a) of the *Act* reaches 65, the Board readjusts the permanent disability benefits under section 203(6) in the following manner:

1. When the diarized section 203 adjustment comes up for review three months prior to the worker attaining 65 years of age, the file will be considered in accordance with the procedures developed for calculating compensation for workers aged 65 or older set out above. For the purpose of this calculation, the original functional permanent disability benefits as determined under section 23(1) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 or section 195 of the *Act*, in effect prior to any previous adjustment under section 24 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, or section 203 of the *Act*, plus applicable cost of listing adjustment as described in policy item #51.00, will be regarded as the permanent disability benefits in effect at age 65.

2. The term adjustment payable to age 65 automatically terminates when the worker reaches age 65. The adjustment calculated as per item (2) above then comes into effect. These new permanent disability benefits will be the higher of the original permanent disability benefit amount plus cost of living adjustments as described in policy item #51.00 or the adjusted permanent disability benefit determined in reference to the calculation for workers aged 65 or older.

The detailed calculation formulae are set out in Appendix 4 to this manual.

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

#46.03 Maximum and Minimum Periodic Payments under Section 203

Section 203(8) provides, “Section 200 *[maximum compensation in the case of further disability]* applies to the calculation of compensation under this section [section 203], but the calculation must not be limited by reference to average earnings at the time of injury.”

Section 203(9) provides, “Periodic payments to an applicant worker that are increased or established under this section must not exceed the maximum the Board would establish, at the time of the reconsideration decision, for a worker in an occupational category similar to that of the applicant worker before the injury if

that other worker had a compensable disability similar to the compensable disability of the applicant worker."

Section 203(10) provides that a decision under this section must not result in periodic payments to a worker being less than they would have been if no application had ever been made under this section.

#46.04 Date when New Periodic Payments Commence under Section 203

Section 203(11) provides that the effective date for the commencement of an increase or establishment of compensation under this section is the date the application for reconsideration is received by the Board.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, including removing language that is out of date.

#46.05 Reapplication under Section 203

Section 203(12) provides:

> A worker may reapply under this section for reconsideration of the worker's compensation 10 years after the worker's most recent application under this section.

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

#46.20 Commutations of New Periodic Reinstated Commutations

If the Board has reinstated periodic payments for permanent disability under section 26 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, or reinstates periodic payments for permanent disability under section 223 of the *Act*, the Board will not generally allow a further commutation. However, the Board does have discretion to permit this in unusual cases.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, including updating the language, renaming the policy and renumbering from policy item #46.15 to policy item #46.20.

#48.42 Recovery Procedures for Overpayments

If, at the time of the discovery of the overpayment, payments are still being made on the claim, the amount of any overpayment will be recovered from those payments. The Board officer will as far as possible do this in a manner which causes the least hardship to the worker. Normally, the Board officer will recover the amount owing by instalments. If payments of the claim are terminated by the time the overpayment is discovered or before full recovery can be obtained, the procedures outlined below are followed. However, if a request for a review by the Review Division or an appeal to the Workers' Compensation Appeal Tribunal against the overpayment is filed, re-collection procedures are as outlined in policy item #48.46.

1. The Vocational Rehabilitation Services and Compensation Services Departments will conduct the initial collection procedure which will include the Board officer making personal contact with the worker in addition to sending two letters, one immediately and one 30 days later. For overpayments in excess of $500, the second letter advises that unpaid accounts will be turned over to the Board's Collections Section.

2. When the overpayment is 70 days overdue it will be sent to the Board's Collections Section. Unless there is evidence of fraud or misrepresentation, claims for overpayments under $500 are not sent to Collections.

3. A letter will be sent to the worker by a Collections Officer at the 70-day overdue date indicating that the overpayment has been transferred to the Board's Collections Section and suggesting that payment be made within a month in order to avoid possible legal action. This letter will make it clear that the Board is serious about collecting the overpayment.

4. If payment is not received within 30 days, or a reasonable payment plan arranged, the Collections Officer will attempt to make telephone contact with the worker or pay a personal visit.

5. If this does not result in positive arrangements for payment, a final, more strongly worded letter will be sent. An asset search will be conducted and if there is a reasonable expectation that money is collectible, the account will be turned over to the Board's Legal Services Division for attention and action. The result of this action could be the seizing of assets or garnisheeing wages.

Policy item #50.00 sets out the procedures regarding the crediting of interest to retroactive temporary and permanent disability lump-sum payments and commutations. In the case of claims overpayments, interest charges only apply

to amounts due where the overpayment is the result of fraud, misrepresentation or the withholding of information by the worker. Interest is not charged on overpayments that result from the correction of an error. The charging of interest on an overpayment must be approved by a Manager or a Director.

In the case of doctors and other health care benefit payees, overpayments are handled by the Board by making a deletion from future payments. There is no attempt by the Board to obtain the recovery of such an overpayment from a worker who received the health care benefits unless the costs of the health care benefits were paid directly to the worker.

EFFECTIVE DATE: March 3, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Policy amended regarding references to review, the Review Division and the Workers' Compensation Appeal Tribunal.

#48.43 Recovery of Overpayments on Reopenings or New Claims

If there is an outstanding overpayment made to a worker on a claim and that claim is reopened or a new claim for the same worker is established, the overpayment will be recovered from that worker. Normally, this will take place following contact with the worker to determine the manner in which the overpayment is to be recovered, either in full from the first payment of wage-loss benefits, or where the overpayment is a considerable sum of money, at a reasonable amount every two weeks during the period of temporary disability. Every attempt will be made to recover the full amount of the overpayment.

If there is an outstanding overpayment to either the worker or the employer and the claim is reopened or a new claim established, and if the to pay worker is still employed by the same employer and the employer continues full salary, the overpayment will be recovered in full from that employer before subsequent wage-loss benefits are paid. The employer will be notified that this process is taking place. No recoveries are made from workers for overpayments made to employers.

Subject to the exception referred to in the preceding paragraph, the recovery of overpayments will be made only from those to whom the overpayment is made.

The general law of bankruptcy releases a bankrupt from all claims provable in bankruptcy upon discharge from bankruptcy. Therefore, if an overpayment has been incurred prior to the bankruptcy date, the Board does not take legal proceedings against the discharged bankrupt to recover the overpayment.

#48.47 Waiver of Overpayment Recoveries

Other than the exceptions listed in policy item #48.41, it is the Board's position that recoveries should be made when an overpayment occurs. As such, it is expected that requests to waive recovery should be rare and must clearly meet policy criteria.

Board policy regarding the waiver of recovery procedures for overpayments provides for the following:

> The President or a Vice-President (or Directors for overpayments under $1,000) will have discretionary authority to waive recovery procedures for overpayments where:
>
> 1. in their judgment, severe financial hardship would result (it is not considered that amounts under $1,000 should be deemed as meeting this requirement); or
>
> 2. it is considered unreasonable or inadvisable to proceed with recovery.

In no case will recovery be waived if there was fraud or misrepresentation. Approval to waive recovery, when granted, does not constitute forgiveness of the debt. In some instances, at the discretion of a Vice-President (or Director for waivers under $1,000), a recovery waiver may be granted even though permanent disability benefits are being paid or will be paid. Should a further claim be recorded or a later reopening accepted where a prior waiver has been approved, the question of initiating recoveries must first be discussed with a Vice-President or Director who approved the waiver.

EFFECTIVE DATE:	June 1, 2009
CROSS REFERENCES:	Policy item #48.41, *When Does an Overpayment of Compensation Occur?*, 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. June 1, 2009 – Deleted reference to Rehabilitation and Compensation Services Division.
APPLICATION:	Applies on or after June 1, 2009.

#48.48 Unpaid Assessments

Unpaid and overdue assessments are treated in the same manner as overpayments if a claim is later received from an employer or principal of the limited company responsible for the debt or an independent operator who has purchased but not fully paid for personal optional protection coverage. If, at the time of the claim, the worker is working for another company or organization, the decision whether or not to recover the overdue assessment from compensation

entitlements will be made by the Board officer in the Finance Division who has been assigned that authority by the President, or a Director or a delegate. Recoveries will not be made from surviving spouses or dependants where the claim is the result of a fatality and the worker was employed with an employer other than the employer owing the assessments.

EFFECTIVE DATE: June 1, 2009
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
November 24, 2011 − Housekeeping amendments were made in accordance with amendments to the *Act.*
June 1, 2009 – Deleted reference to Compensation Services.
March 18, 2003 – Deleted the title Manager, Collections, and the substitution of the Board officer in the Finance Division who has been assigned that authority by the President.
APPLICATION: Applies on or after June 1, 2009.

#48.50 Payment to Surviving Spouse Free from Debts of Deceased

Section 231(4) provides that, "Any compensation owing or accrued to a worker for a period not longer than 3 months before the worker's death may, at the discretion of the Board, be paid to a surviving spouse or a person who takes charge of the funeral arrangements, free from debts of the deceased."

AUTHORITY: Section 231(4) of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#49.00 INCAPACITY OF A WORKER

For the purposes of the compensation provisions of the *Act*, section 121 provides:

(a) a worker who is a minor has the capacity of a person who has reached 19 years of age, and

(b) no other person has a cause of action or right to compensation for the personal injury or disablement of the worker except as expressly provided in the compensation provisions.

Payments for the maintenance of the worker's home should normally be made to the person who is managing the property on the worker's behalf. The Board should not normally undertake the management of a worker's property.

4. Accumulation of balance

Wage-loss benefit payments may be "accumulated by the Board for payment to the worker on the worker's recovery". Any balance remaining after payments have been made under alternatives 1 to 3 set out above should be accumulated until the worker has recovered the capacity to manage personal affairs. The accumulations should then be paid to the worker either as a lump sum or, if this is in the worker's best interests, by instalments over a period of time.

AUTHORITY:	Sections 231 and 232 of the *Act.*
CROSS REFERENCES:	Policy item #48.30, *Worker Not Supporting Dependants*, 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. The principles for this policy were derived from *Workers Compensation Reporter* Series Decision No. 247 (1977), 3 W.C.R. 127.

#49.14 Application of Sections 231(2) and 231(3) in Cases of Permanent Disability

In the case of a worker entitled to permanent disability benefit payments who is receiving custodial care in a hospital or elsewhere, the Board may take any of the alternative courses of action set out in subsections 231(2)(b), 231(2)(c)(i), and 231(2)(c)(ii).The Board's priorities for dealing with these cases are set out below.

1. Worker able to use money for personal needs

Under section 231(2)(c)(i), permanent disability payments will in the first place be paid to the worker to the extent that the worker is capable of using them for personal needs. If a worker is capable of handling greater sums than required for personal needs, section 231(2)(c)(i) authorizes the Board to pay these greater amounts to the worker and this is the practice of the Board in the case of temporary disability. However, in the case of permanent disability, the exercise of this authority would conflict with the object of the section to prevent the accumulation of estates. It is not, therefore the Board's practice to pay more to the permanently disabled worker than required for personal needs.

2. Person dependent upon the worker for support

   Any balance remaining after the application of alternative 1 above will be applied for the benefit of any dependants of the worker according to the same principles as for temporary disability.

3. Maintenance costs

   Any balance remaining after the application of alternatives 1 and 2 above will be applied toward the cost of the worker's maintenance. This applies to the full cost of custodial care, not just the value of the worker's room and board. It only applies when the Board is paying the cost of maintenance as part of the costs of a compensation claim.

If a worker is conscious and compensation is being applied toward the cost of maintenance, the worker must receive a comfort allowance of a minimum amount which is subject to cost of living adjustments as described in policy item #51.20. The amount of this minimum is set out in policy item #49.10. Comfort allowance is interpreted to mean the monies payable to the worker under alternative 1 above which the worker is able to use for personal needs. The result is that if the worker is conscious, the minimum amount payable for personal needs is the amount set out in policy item #49.10.

Any balance remaining after payment of the cost of maintenance will be paid to the worker to the extent the worker is able to manage personal affairs. To the extent the worker is not able, it will be paid to the person who is best qualified to administer it under the terms of section 231(1) of the *Act*.

AUTHORITY:	Section 231 of the *Act*.
CROSS REFERENCES:	Policy item #49.10, *Worker Receiving Custodial Care in Hospital*; Policy item #49.13, *Application of Section 231(2) in Cases of Temporary Disability*; Policy item #51.20, *Dollar Amounts in the Act*, 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.

#49.15 Application of Section 231 on a Change of Circumstances

A situation may arise where the compensation of a worker receiving custodial care is being applied to the cost of maintenance, but the worker becomes able to leave the hospital and live at home. Section 231(2)(b) would then cease to have any application so that it would be necessary to resume periodic payment of the worker's permanent disability benefits. However, the worker would not be entitled to receive the payments previously applied to the cost of maintenance. If, following departure from custodial care, the worker remains incapable of handling personal affairs, consideration should be given to the application of section 231(1).

The resulting percentage changes determined annually are set out below:

Date	Percentage
January 1, 2020	1.864280

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

When the Board makes the adjustments, those dollar amounts referred to in the *Act* are deemed to be amended.

These provisions do not apply to the figures referred to in the maximum wage rate, and other figures referred to in policy item #69.00.

Authority to approve adjustments under section 333 has been assigned to the President.

Authority has also been assigned to the President to adjust the following amounts to reflect changes based upon the consumer price index, using the formula set out in policy of the applicable Item of the *Manual*:

Amount of Disfigurement Compensation	#43.20
Clothing Allowances	C10-82.00
Transportation	C10-83.00
Subsistence Allowances	C10-83.10
Additional Benefits for Severely Disabled Workers	C10-84.00
Transfer of Costs	#114.11
Funeral and Other Death Expenses	C8-54.00

The Board adjusts dollar amounts referred to in Part 4, Division 5 − Compensation in Relation to Death of Worker, and section 225 of the *Act* in accordance with section 333 of the *Act*. In addition, effective December 31, 2003, the Board adjusts the dollar amounts referred to in Part 4, Division 5 − Compensation in Relation to Death of Worker, and section 225 and Schedule C of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as it read immediately before June 30, 2002, in accordance with section 333 of the *Act*.

EFFECTIVE DATE: December 31, 2003
AUTHORITY: Section 333 of the *Act*.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
January 1, 2015 − Consequential amendments were made arising from changes to Chapter 10, *Health Care, Rehabilitation Services & Claims Manual,* Volume II.
December 31, 2003 – Policy amended regarding references to then sections 17 and 18 of the then *Act*, as well as dollar amounts in then sections 17, 18, and then Schedule C of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as it read immediately before June 30, 2002.

APPLICATION: This policy item applies to all dollar amounts in the *Act*.

RE:	Compensation on the Death of a Worker − Introduction	ITEM:	C8-52.00

BACKGROUND

1. Explanatory Notes

This policy provides an overview of compensation entitlement on the death of a worker.

2. The Act

Section 1, in part:

> **"family member"**, in relation to a worker, means the following:
>
> (a) a spouse, parent, grandparent, step-parent, child, grandchild, stepchild, sibling or half-sibling of the worker;
>
> (b) a person, whether related to the worker by blood or not, who stood in place of a parent of the worker or to whom the worker stood in place of a parent;
>
> ...

Section 134(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 [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] must be paid by the Board out of the accident fund.

Section 136(1):

> Compensation is payable under this Part [Part 4 – Compensation to Injured Workers and Their Dependants] in relation to an occupational disease, as if the disease were a personal injury arising out of and in the course of a worker's employment, if
>
> (a) as applicable,
>
> (i) the worker has an occupational disease that disables the worker from earning full wages at the work at which the worker was employed, or

(ii) the death of the worker is caused by an occupational disease, and

(b) the occupational disease is due to the nature of any employment in which the worker was employed, whether under one or more employments.

POLICY

Compensation is payable under the *Act* where the death of a worker arises out of and in the course of the worker's employment or is caused by an occupational disease that is due to the nature of any employment in which the worker was employed.

Compensation is payable to the worker's dependants or in some cases to non-dependent family members having a reasonable expectation of pecuniary benefit from the continuation of the life of the deceased worker.

Compensation on the death of a worker is normally based on the worker's average net earnings prior to the date of death. In addition, cost of living adjustments are made to payments and to the dollar amounts in the *Act*. Effective December 31, 2003, where a worker in receipt of a permanent disability benefits dies as a result of the compensable disability and compensation for one or more dependants is payable, no cost of living adjustment is applied in the 12 month period following the date of death.

EFFECTIVE DATE:	December 31, 2003
AUTHORITY:	Sections 134(1), 136(1), and Part 4, Division 5 – Compensation in Relation to Death of a Worker, of the *Act*.
CROSS REFERENCES:	Policy item #51.00, *Cost of Living Adjustments to Periodic Payments*; Policy item #51.20, *Dollar Amounts in the Act*; Chapter 9 − Average Earnings, 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. Replaced policy item #52.00 of the *Rehabilitation Services & Claims Manual,* Volume II.
APPLICATION:	This Item applies to the death of a worker on or after December 31, 2003.

POLICY

1. Meaning of Dependant

The term "dependant" means a family member of a worker who was wholly or partly dependent on the worker's earnings at the time of the worker's death, or a family member of the worker who, but for the worker's incapacity due to the accident or occupational disease would have been wholly or partly dependent on the worker's earnings. In certain limited situations, as discussed in Item C8-56.70, a spouse, parent, child, or other family member who satisfies the Board that he or she had a reasonable expectation of pecuniary benefit from the worker if the worker had not died, may also be entitled to compensation.

Section 1 of the *Act* defines who is a family member in relation to a worker.

Only the family members of a worker may be found to be the worker's dependants. Thus, a former spouse does not qualify as a dependant of a deceased worker because the former spouse is not considered a family member of the worker under the *Act*.

Dependency does not exist simply because the claimant is a family member of the worker. There must be evidence that, at the time of the worker's death, the claimant was actually wholly or partly dependent on the worker's earnings.

Except in respect of the provision discussed in Item C8-56.70, a reasonable expectation of pecuniary benefit from the continuation of the life of the worker is not itself sufficient to constitute dependency.

The above principles also apply where the claimant is a child. In the case of a child who was unborn at the date of the worker's death, once paternity is established, the fact that the worker would have been under an obligation to support the child is evidence to warrant an inference that that person would have supported the child, and should be accepted as proof of dependency unless it is controverted by evidence to the contrary. If it is found that the worker was supporting the mother at the time of death, that is also evidence from which an inference may be drawn that that person would have supported the child.

Dependency is determined at the date of death. Changes of circumstances after the death, for instance, the marriage of a child, do not affect the status of a person as a dependant.

2. Presumptions of Dependency

If two workers are spouses and both are contributing to the support of a common household, each is deemed to be a dependant of the other.

If parents contribute to the support of a common household at which their children also reside, the children are deemed to be dependants of the parent whose death is compensable.

For a common household to exist it is not necessary that there be a constant 24-hour-a-day presence by both parties in the house. There are many reasons why one party to a marriage would leave the house for different periods which would not affect the existence of the common household. However, this only applies when the absences are consistent with the normal continuation of the marriage. The common household will come to an end when there is some kind of separation of the parties which brings into question the continued existence of the marriage. For example, if one party deserts the other or, because of difficulties in the marital relationship, a separation agreement or court order comes into being.

A prospect of reconciliation is not sufficient to establish that a common household existed. This might indicate a possibility of the common household again coming into existence at a future time, but does not alter the fact that there was no such household in existence at the time of the worker's death.

EFFECTIVE DATE:	December 31, 2003
AUTHORITY:	Sections 1 and 165 of the *Act*.
CROSS REFERENCES:	Item C8-56.70, *Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit*, 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. March 1, 2012 − Housekeeping changes made in accordance with legislative amendments to the then *Act*. November 24, 2011 − Housekeeping changes made in accordance with legislative amendments to the then *Act*. March 22, 2004 – Typographical correction made, not intended to change substantive decision-making. December 31, 2003 – This Item replaced policy items #54.00 and #54.10 of the *Rehabilitation Services & Claims Manual,* Volume II, to implement the legislative amendments contained in the *Skills Development and Labour Statutes Amendment Act*, 2003 (Bill 37 of 2003).
APPLICATION:	This Item applies to the death of a worker on or after December 31, 2003.

2. Exception – Deaths before June 30, 2002

If the actual date of the worker's death was before June 30, 2002, the recalculation of compensation is based on the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 as it read immediately before June 30, 2002.

The policies in Volume I of this *Manual* apply in such cases. However, cost of living adjustments to benefits paid on or after December 31, 2003 are made in accordance with policy item #51.00 of Volume II of this *Manual*. In addition, the dollar amounts referred to in sections 17 and 18 and Schedule C of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 as it read immediately before June 30, 2002, are adjusted in accordance with policy item #51.20 of Volume II of this *Manual*.

EFFECTIVE DATE:	June 30, 2002
AUTHORITY:	Sections 181, 182, 183, 184, 185, and 228 of the *Act*.
CROSS REFERENCES:	Policy item #51.00, *Cost of Living Adjustments to Periodic Payments*; Policy item #51.20, *Dollar Amounts in the Act*; 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"*; Item C8-56.00, *Compensation on the Death of a Worker – Calculation of Compensation – Dependent Spouse with Children*; Item C8-56.10, *Compensation on the Death of a Worker – Calculation of Compensation – Dependent Spouse with No Children*; Item C8-56.40, *Compensation on the Death of a Worker – Calculation of Compensation – Children*, 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. November 24, 2011 − Housekeeping amendments made in accordance with legislative amendments to the then *Act.* June 30, 2002 − Replaced policy item #55.50 of the *Rehabilitation Services & Claims Manual,* Volume II.
APPLICATION:	This Item applies to the death of a worker on or after June 30, 2002.

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

APPLICATION: To all decisions on or after June 1, 2009.

#65.01 Variable Earnings

The Board recognizes that not all workers receive remuneration based on a regular five-day work week. Accordingly, calculating time of the injury earnings based on a worker's rate of pay on the date of the injury is not always appropriate. The guidelines set out below apply in determining short-term average earnings where a worker is regularly employed with variable earnings.

The Board considers a worker to have variable earnings if the worker:

- works on call for one or more employers at differing rates of pay and does not have a casual pattern of employment;
- has irregular shifts;
- has shifts with no repeating patterns;
- works a shift cycle involving more than five cycles;
- works differing shift hours per cycle;
- is paid shift differentials; or
- is scheduled for a shift cycle change.

For such workers with variable earnings, the Board will usually calculate the short-term average earnings with reference to the worker's earnings in the three month period up to and including the worker's date of injury. However, the Board may use a shorter time period if it determines that the three month time period is not an accurate reflection of the worker's time of the injury earnings.

Situations where a shorter time period may be used include:

- if a regularly employed worker with variable earnings has been with an employer for less than three months, the worker's short-term average earnings are based on the worker's earnings from the worker's date of hire up to and including the date of the injury.
- if the worker received wage-loss benefits (or wage-loss equivalent vocational rehabilitation allowances/benefits) during the three month period prior to the date of injury.

- if the worker has experienced a significant atypical and/or irregular disruption in the pattern of employment during the three month period prior to the date of the injury. This circumstance may arise, for example, if the worker had a lengthy absence due to a non-compensable illness or injury, educational or maternity/paternity reasons.

In such situations, the Board may choose to exclude a portion of the time period over which earnings are averaged if doing so would provide a more accurate reflection of the worker's time of the injury earnings. The Board does not generally exclude short absences from work for non-compensable reasons or minor fluctuations in hours worked or rate of pay.

EFFECTIVE DATE: June 1, 2009
CROSS REFERENCES: Policy item #65.00, *General Rule for Determining Short-Term Average Earnings*;
Policy item #67.10, *Casual Pattern of Employment*, 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.
APPLICATION: To all decisions on or after June 1, 2009.

#65.02 Worker with Two Jobs

If a worker holds two jobs and is disabled from both by an injury arising out of and in the course of one of them, the worker's earnings at the time of the injury will be based on the combined earnings of both jobs up to the statutory maximum. This applies whether or not the other job is covered by the compensation provisions of the *Act* or is self-employment. The total days worked in both jobs are merged to obtain the days worked per week. Both employers, if covered by the compensation provisions of the *Act*, may be reimbursed by the Board if they continue paying the disabled worker (policy item #34.40).

If a worker is engaged in two jobs, one of which is a job for which personal optional protection has been purchased, the income earned in the non-personal optional protection job will be combined with the amount of personal optional protection purchased for the other job, up to the statutory maximum, in order to determine average earnings.

EFFECTIVE DATE: June 1, 2009
CROSS REFERENCES: Policy item #34.40, *Pay Employer Claims*;
Policy item #65.00, *General Rule for Determining Short-Term Average Earnings*;
Policy item #67.10, *Casual Pattern of Employment*;
Policy item #67.20, *Personal Optional Protection*, 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.
March 18, 2003 – Policy amended as to where the maximum and minimum wage rate figures may be obtained.

#67.30 Workers with No Earnings

Section 212 of the *Act* provides:

> If a worker had no earnings at the time of the injury, the Board must determine the amount of a worker's average earnings from the date of injury in a manner that the Board considers appropriate.

This is an exception to both general rules for determining average earnings. There is no 10-week average earnings review.

Persons working without pay are not generally considered as "workers" under the *Act*. However, there are some exceptional situations of this type which are covered and for which the *Act* or the Board has specified the earnings on which compensation is to be based. These situations are described in policy items #67.31 – #67.34.

CROSS REFERENCES: Policy item #67.31, *Volunteer Workers Admitted by the Board under Section 5*;
Policy item #67.32, *Volunteer Firefighters*;
Policy item #67.33, *Sisters in Catholic Institutions*;
Policy item #67.34, *Emergency Services Workers*, 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.

#67.31 Volunteer Workers Admitted by the Board under Section 5

Section 213 of the *Act* provides that if a person who is deemed to be a worker under section 5 *[extending application: public interest undertakings]* of the *Act*, is not regularly employed, the Board may, on the terms and conditions the Board directs, fix the amount of a person's average earnings having regard to all the circumstances, including the person's income, at not less than the amount set out below per week nor more than the maximum wage rate provided under section 209 of the *Act*.

January 1, 2019	—	December 31, 2019	$138.61
January 1, 2020	—	December 31, 2020	$141.19

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

The minimum wage set out above is subject to cost of living adjustments as described in policy item #51.20.

CROSS REFERENCES: Policy item #51.20, *Dollar Amounts in the Act*, 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.

#67.32 Volunteer Firefighters

The average earnings of volunteer firefighters working without remuneration is deemed to be the same in amount as the average earnings in their regular employment or employments, not, however, to be less than the amount on which the employer has been assessed (Item AP1-1-5 of the *Assessment Manual*).

In order to provide a minimum level of coverage to volunteer firefighters who have no attachment to the labour force, the employer is assessed $75.00 per month ($17.30 per week) for each person, unless the employer concerned has arranged with the Board for, or pays the claimant, a higher amount. Compensation is based on this rate unless or until wages are confirmed as being lost at another job. In the latter case, the rate can be increased to the rate on the job, but the $17.30 cannot be combined with it.

If the volunteer firefighter is unemployed, but has an attachment to the labour force in the sense that the volunteer firefighter is seeking employment, wage-loss benefits are determined on the average earnings from the last regular employment. The fact that the volunteer firefighter is collecting Employment Insurance benefits confirms for compensation purposes an attachment to the labour force. The 12 months immediately preceding the volunteer firefighter's date of injury will be used to determine the amount of wage-loss benefits to be paid. See policy item #68.40 with respect to employment insurance income and the composition of average earnings.

If a volunteer firefighter is paid wages by the fire brigade these can be combined with earnings from another job, but not to exceed the maximum wage rate.

Volunteer firefighters who have no attachment to the labour force such as a retired person or someone in receipt of welfare payments would not generally have a loss of wages as a result of an injury. Claims for these individuals are paid on the basis of a $75.00 per month assessment figure or greater where the employer arranges a higher valuation on the volunteer services.

There will be circumstances which do not fall squarely within these guidelines. When that occurs, the decision on what best represents the loss of earnings

person of similar status employed in the same type and classification of employment

(a) by the same employer, or

(b) if no person is so employed, by an employer in the same region.

This is a mandatory exception to the general rule for determining long-term average earnings and applies to a worker with permanent employment.

To determine a worker's average earnings under section 217 of the *Act*, the Board will contact the injury employer to determine what the average earnings are or would be of a person of similar status employed in the same type and classification of employment.

If this information is not available, the Board will contact an employer similar to the injury employer, in the same region as the injury employer, to determine what the average earnings are of a person of similar status employed in the same type and classification of employment.

The Board is not limited to obtaining wage rate information from a single employer. As such, the Board may use relevant information from employers in the region on the average earnings of a person of similar status employed in the same type and classification of employment. This information may be used to determine the average earnings of a worker who has worked less than 12 months for the injury employer where relevant information is not available from the worker's employer.

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

#67.60 Exceptional Circumstances

Section 218 of the *Act* provides:

(1) If exceptional circumstances exist such that the Board considers that the application of section 211 would be inequitable, the Board's determination of the amount of a worker's average earnings may be based on an amount that the Board considers best reflects the worker's loss of earnings.

(2) Subsection (1) does not apply in the circumstances described in section 214, 215, 216 or 217.

As stated in section 218(2), this provision does not apply to the following:

- a casual worker;
- a person who purchased coverage under section 4(2) of the *Act*;
- a worker determined by the Board to be an apprentice or a learner; or
- a permanently employed worker who has been employed by the employer for less than 12 months.

Section 218 is a discretionary provision and an exception to the application of section 211 for determining a worker's long-term average earnings. As such, it will only be applied if the Board considers that, due to exceptional circumstances, the application of section 211 is inequitable.

The purpose of this policy is to assist in identifying inequities where due to exceptional circumstances the level of compensation calculated using the general rule does not best reflect the worker's long-term loss of earnings.

In making this determination, "best" does not mean the highest level of compensation possible, but rather, that the level of compensation reflects the actual loss incurred by the worker.

The general rule uses one year of a worker's earnings history to account for typical variations in earnings. Short absences from work for non-compensable reasons, minor fluctuations in hours worked or rate of pay, or similar reasons for changes to earnings are typical and will not be considered exceptional circumstances.

The following are circumstances that are generally accepted as being exceptional circumstances affecting a worker's average earnings. This list is not exhaustive. The Board may consider other reasons to find that exceptional circumstances exist, if those reasons are consistent with the *Act* and the purpose of this policy:

(a) Any prior period(s) when a worker received wage-loss benefits (or wage-loss equivalent rehabilitation allowances/benefits) during the 12-month period immediately preceding the worker's date of injury. The Board considers it inequitable to reduce a worker's average earnings by including periods of wage-loss benefits (or wage-loss equivalent rehabilitation allowances/benefits) in the average earnings calculation.

- This circumstance may arise, for example, if a worker has received temporary total disability wage-loss benefits, temporary partial disability wage-loss benefits, vocational rehabilitation training allowance or other types of wage-replacement benefits.

#69.00 MAXIMUM AMOUNT OF AVERAGE EARNINGS

Section 208(2) provides that a worker's average earnings cannot exceed the "maximum wage rate" as determined under section 209.

The *Act* contains a special procedure for determining the maximum wage rate in force in any year.

Section 209 provides:

> (1) Before the end of each calendar year, the Board must determine the maximum wage rate applicable for the following calendar year.
>
> (2) The maximum wage rate to be determined under this section must be an amount, which may be rounded to the nearest $100, that the Board considers represents the same relationship to the amount of $40 000 as
>
> (a) the annual average of wages and salaries in British Columbia for the year preceding the year in which the determination is being made
>
> bears to
>
> (b) the annual average of wages and salaries in British Columbia for the year 1984.
>
> (3) For the purpose of determining annual average of wages and salaries under this section, the Board may use data published or supplied by Statistics Canada.

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 benefit 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. Exceptions to this rule may occur if, on a reopening occurring more than three years after a worker's injury, the Board exercises its authority under section 193 or section 197 to base the amount of compensation payable on the worker's earnings at the date of the reopening (policy item #70.20).

Authority to approve increases in the maximum wage rate under section 209 has been assigned to the President.

CROSS REFERENCES: Policy item #70.20, *Reopenings Over Three Years*, 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.

#69.10 Deduction of Permanent Disability Periodic Payments from Wage-Loss Benefits

Section 200(1) provides:

> If 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 compensation that, in total, is in excess of the maximum payable for total disability.

If a worker is entitled to wage-loss benefits at the current maximum, and is in receipt of permanent disability benefits under a previous claim, the permanent disability benefit periodic payment is deducted from the wage-loss benefits payments. If the wage-loss benefits payments are less than the current maximum only the amount in excess of the maximum when the permanent disability benefits payment and wage-loss benefits payment are added together is deducted.

For calculating the amount of a deduction, the daily rate of the permanent disability benefits must be determined and then deducted from the daily rate of wage-loss benefits in the manner set out in policy item #70.10.

RE:	Vocational Rehabilitation − Work Assessments	ITEM:	C11-88.10

BACKGROUND

1. Explanatory Notes

This policy describes work assessment programs.

2. The Act

Section 155(1):

> To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Work Assessments

A work assessment program is a method of determining or enhancing a worker's employment capabilities and potential in an actual work environment with an employer, or in a simulated setting using functional evaluation methodology.

Guidelines

Subject to policy in Item C11-88.00, the following guidelines on work assessments apply.

1. When a work assessment with an employer takes place prior to full medical recovery and is intended primarily as a therapeutic measure to assist increasing levels of work activity, the program is normally referred to as a "Graduated Return to Work". This program is commonly a first step in a worker's successful reinstatement with the pre-injury employer.

2. Work assessments also allow employers and workers to assess the viability of employment in a particular job and are frequently used together with training-on-the-job programs.

Expenditures

1. The Board provides financial assistance to workers who are participating in work assessment programs, either through a continuation of wage-loss benefits under section 191 or 192 of the *Act*, or payment of rehabilitation allowances under section 155 when wage-loss benefits are no longer payable.

2. Costs arising from injuries or aggravations that occur during the course of Board-sponsored work assessments with an employer are not charged to the participating employer.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Sections 155, 190, 191, and 192 of the *Act*.
CROSS REFERENCES:	Item C11-87.00, *Vocational Rehabilitation − Process*; Item C11-88.00, *Vocational Rehabilitation − Nature and Extent of Programs and Services*, 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. Replaced policy items #88.10 - #88.12 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, or the *Act*.

RE:	Vocational Rehabilitation − Employability Assessments − Temporary Partial Disability and Permanent Partial Disability	ITEM:	C11-89.00

BACKGROUND

1. Explanatory Notes

This policy sets out the employability assessment process for temporary partial disability and permanent partial disability.

2. The Act

Section 155(1):

> To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

Section 192(1), in part:

> … if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount 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*. (emphasis added)

Section 196:

> (1) This section applies in relation to a permanent partial disability if the Board determines that the combined effect of

(a) the worker's occupation at the time of the injury, and

(b) the worker's disability resulting from the injury

is so exceptional that an amount determined under section 195 does not appropriately compensate the worker for the injury.

(2) In making a determination under subsection (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.

(3) If the Board makes a determination under subsection (1), the Board may pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between

(a) the average net earnings of the worker 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*. (emphasis added)

POLICY

Employability Assessments

Sections 192 and 196 of the *Act* direct the Board to estimate what a worker is capable of earning in a suitable occupation. This requires an employability assessment.

One of the functions of Vocational Rehabilitation Services is to assist in the assessment of employability for temporary partial disability and permanent partial disability under sections 192 and 196 of the *Act*.

Temporary Partial Disability

Where a worker is medically judged to be only partially disabled and the condition remains temporary, any further wage-loss benefits may be processed under section 192 of the *Act*. In most cases, this assessment under section 192 is conducted without a referral to Vocational Rehabilitation Services. The goal is to identify suitable

occupations, along with estimated earnings, that maximize the worker's short-term earning capacity up to the pre-injury wage rate. In most cases, the focus of the assessment is a return to work with the pre-injury employer.

A referral to Vocational Rehabilitation Services may be made if assistance is needed in this regard or a more comprehensive employability assessment is required. For example, if there is no attachment to the pre-injury employer, suitable and available occupations in the labour market will be considered.

Vocational Rehabilitation Services provides the documented objective evidence of what the worker is earning or is capable of earning, not the decision on a worker's entitlement under section 192 itself.

In determining section 192 wage-loss benefits, 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.

Where the Board and a worker are engaged in carrying out a rehabilitation plan, and all parties are cooperating in good faith, it is not required that temporary partial disability wage-loss benefits be based on short-term, temporary or lesser paying jobs that the worker could do, but which would be incompatible with the demands and commitment required to meet the overall vocational objective.

Permanent Partial Disability

In exceptional cases, a worker's entitlement to permanent partial disability benefits may be determined under the method set out in section 196 of the *Act*. This method requires an employability assessment.

The goal is to identify suitable occupations, along with estimated earnings, that maximize the worker's long-term earning capacity up to the pre-injury wage rate. In most cases, "long-term" refers to three to five years.

The employability assessment process is conducted in light of all possible rehabilitation measures that may be of assistance and appropriate to the circumstances of each worker.

The rehabilitation plan may form the basis for the employability assessment. A functional capacity evaluation may be used to assess the worker's capacity for work. This provides information on the worker's residual maximum functional capabilities, confirmation of identified alternative job options and plans for vocational reintegration.

Labour market data in conjunction with the objective functional capacity information is used to create a residual vocational profile. A list of suitable occupations based on the

profile is then produced. Consideration is then given to whether these occupations are reasonably available.

The worker is given a copy of the assessment and allowed 30 days in which to respond. Unless this timeframe is waived by the worker, submissions received within this time frame are considered before the Board makes a final decision on section 196 entitlement.

EFFECTIVE DATE:	June 1, 2009
AUTHORITY:	Sections 155, 192, and 196 of the *Act*.
CROSS REFERENCES:	Policy item #35.11, *Procedure for Determining Whether Worker is Temporarily Partially Disabled*; Policy item #35.20, *Amount of Payment*; Policy item #35.21, *Suitable Occupation*; Policy item #40.10, *Section 196 Assessment Formula*; Policy item #40.12, *Suitable Occupation*; Policy item #40.13, *Measurement of Earnings Loss*; Policy item #40.14, *Provision of Employability Assessments*; Item C11-89.10, *Vocational Rehabilitation – Income Continuity*, 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. June 1, 2009 – Policy updated to reflect the wording of the legislation and to remove outdated references to decision-makers, departments, appellate bodies and external agencies. November 1, 2002 − Reformatted and revised policy to set out the employability assessment process for temporary partial disability and permanent partial disability. Replaced policy items #89.00, #89.10, and #89.20 of the *Rehabilitation Services & Claims Manual,* Volume II. Applied to decisions made on or after November 1, 2002 on claims adjudicated under the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as amended by the *Workers Compensation Amendment Act, 2002*.
APPLICATION:	Applies on or after June 1, 2009.

CHAPTER 12

CLAIMS PROCEDURES

#92.00 INTRODUCTION

This chapter relates to the roles and responsibilities of workers, employers, physicians, qualified practitioners, other persons authorized to provide health care, and the Board in the making and adjudicating of compensation claims.

#93.00 RESPONSIBILITIES OF CLAIMANTS

#93.10 Report to Employer

Section 149 of the *Act* provides, in part:

> (1) This section applies in relation to every occurrence of an injury or disabling occupational disease to a worker in an industry that is within the scope of the compensation provisions.
>
> (2) As soon as practicable after the occurrence, the worker or, in case of death, the worker's dependant must inform the employer of the occurrence as follows:
>
> (a) the information provided must include
>
> (i) the name of the worker,
>
> (ii) the time and place of the occurrence, and
>
> (iii) in ordinary language, the nature and cause of the injury or disease.
>
> (b) the information must be provided to the superintendent, first aid attendant, supervisor or agent in charge of the work where the injury occurred or to another appropriate representative of the employer.
>
> ...

Where the worker's condition results from a series of injuries rather than just one injury, section 149(2) is complied with if the report to the employer is made as soon as practicable after the last injury in the series.

Pursuant to section 149(3) of the *Act*, in the case of an occupational disease, the employer who is to be informed of the death or disablement is the employer who last employed the worker in the employment in relation to which the occupational disease was due.

Where the worker is a commercial fisher, the "employer" to whom the fisher must report is set out in section 10 of the *Fishing Industry Regulations*.

EFFECTIVE DATE: March 18, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 18, 2003 – Deleted reference to the *Workers' Compensation Reporter* Decision No. 223.

#93.11 Procedure for Reporting

There is no requirement as to the form of the notice. It may be written or oral. However, section 149(4) provides that on the request of the employer, the worker must, if fit to do so, provide to the employer particulars of the injury or occupational disease on a form directed by the Board and supplied to the worker by the employer.

For the convenience of employers, the Board has prepared a form for the worker's report. This form, "Worker's Report of Injury or Occupational Disease to Employer", is called Form 6A. As long as the employer uses exactly this form directed by the Board, the worker is required by law to complete the form as long as fit to do so, and requested to do so by the employer.

There is no law which prevents an employer from using another form for the purpose of a worker's report, and including such questions as the employer may wish. But if another form is used, it must not be described as a form supplied or directed by the Board, and the worker is not required by law to complete it.

If the employer does not have all of the information requested on the Form 7 (described in policy item #94.11), the employer is not required to obtain it from the worker. The obligation of an employer, when completing a Form 7, is to investigate the reported injury or occupational disease and to provide the Board with the information obtained.

Many employers set up their own system of reporting to assist them in carrying out their obligations. If the worker, however, reports to some other company official who was not designated by the employer, this does not mean there is no compliance with the worker's responsibilities under the *Act*.

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. The principles set out regarding an employer's obligations when completing a Form 7 were derived from *Workers' Compensation Board of British Columbia, W.C.B. News*, November – December 1975, 4.

Section 151, in part, provides:

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

(a) an application is not filed within the period referred to in subsection (3) [see policy item #93.21],

(b) the Board is satisfied that special circumstances existed that precluded filing within that period, and

(c) the application is filed within 3 years after the date referred to in subsection (3).

(5) The Board may pay the compensation provided under this Part for the period beginning on the date the Board receives an application for compensation if

(a) an application is not filed within the period required to in subsection (3),

(b) the Board is satisfied that special circumstances existed that precluded filing within that period, and

(c) the application is filed more than 3 years after the date referred to in subsection (3).

Section 152 of the *Act* provides:

(1) The Board may pay the compensation provided under this Part if

(a) the application for compensation arises from a worker's death or disablement due to an occupational disease,

(b) sufficient medical or scientific evidence was not available on the date referred to in section 151(3) for the Board to recognize the disease as an occupational disease and this evidence became available on a later date, and

(c) the application is filed within 3 years after the date that sufficient medical or scientific evidence, as determined by the Board, became available to the Board.

(2) If, since July 1, 1974, the Board considered an application for compensation under the equivalent of this section or section 151 in respect of a worker's death or disablement from occupational disease, the Board may reconsider the application but must apply subsection (1) of this section in the reconsideration.

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

1. Special circumstances must have existed that precluded the application from being filed within that period, and

2. The Board must exercise its discretion to pay compensation.

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

1. Special Circumstances

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

   The following facts illustrate a situation where special circumstances were found to exist. The worker incurred a minor right wrist injury on October 20, 1976, which at the time caused no disablement from work and did not require the worker to seek medical attention. There was, therefore, no reason why the worker should claim compensation from the Board, nor any reason why the worker's doctor or employer should submit reports to the Board. It was not until 1978 when the worker began to experience problems with the right wrist that the worker submitted a claim to the Board. It was only then that the worker was incurring monetary losses for which compensation might be appropriate.

2. Discretion of the Board

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

This policy does not restrict the Board from pursuing all available courses of action in response to fraud or misrepresentation.

EFFECTIVE DATE: June 1, 2009
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Updated reference to then titled Human Resources and Skills Development Canada and Canada Revenue Agency.
APPLICATION: Applies on or after June 1, 2009.

#93.30 Medical Treatment and Examination

The obligations of an injured worker to undertake medical treatment and examination are discussed in Item C10-73.00.

#93.40 Working While Receiving Wage-Loss Benefits

A worker is obliged to report to the Board any earnings which are received while being paid wage-loss benefits. Such earnings will be taken into account in computing wage-loss benefits under the rules discussed in policy item #35.00.

#94.00 RESPONSIBILITIES OF EMPLOYERS

#94.10 Report to the Board

Subject to policy items #94.12 and #94.13, section 150(1) of the *Act* provides that an employer must report to the Board, within three days after its occurrence, every injury to a worker that is or is claimed to be an injury arising out of and in the course of the worker's employment.

Subject to policy items #94.12 and #94.13, section 150(2) of the *Act* provides that an employer must report to the Board, within three days after receiving information under section 149, every disabling occupational disease or claim for or allegation of an occupational disease in relation to a worker.

Section 150(3) of the *Act* provides that an employer must report immediately to the Board and to the Board's local representative, the death of a worker if the death is or is claimed to be a death arising out of and in the course of the worker's employment.

The application of the above provisions to claims by commercial fishers is discussed in sections 4 and 10 of the *Fishing Industry Regulations*.

EFFECTIVE DATE: March 18, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 18, 2003 – Deleted references to the *Workers' Compensation Reporter* Decision Nos. 223 and 224.

#94.11 Form of Report

The report must be on the form directed by the Board and must provide the following information:

1. the name and address of the worker;

2. the time and place of the injury, disease or death;

3. the nature of the injury or alleged injury;

4. the name and address of any physician or qualified practitioner who attended the worker; and

5. any other particulars required by the Board or by the regulations.

The report may be made by mailing copies of the form addressed to the Board at the address specified by the Board.

The Board has directed forms for employers to report injuries, occupational diseases, or deaths. These are as follows:

Form 7 Employer's Report of Injury or Occupational disease

Form 9 Employer's Subsequent Statement (Completed at the employer's option or at the Board's request, as soon as the injured worker has returned, or is able to work.)

The report must be approved by an authorized official of the employer other than the worker.

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

#94.12 What Injuries Must Be Reported

Section 2 of the *Report of Injuries Regulations* provides that a reportable injury is an injury arising out of and in the course of a worker's employment, or which is claimed by the worker concerned to have arisen out of and in the course of such employment, and in respect of which any one of the following conditions is present or subsequently occurs:

(a) the worker loses consciousness following the injury;

(b) the worker is transported, or directed by a first aid attendant or other representative of the employer to a hospital or other place of medical treatment, or is recommended by such person to go to such place;

(c) the injury is one that obviously requires medical treatment;

(i) make an application for compensation, and

(ii) provide the certificates and proofs, required in relation to the application.

This duty applies to a psychiatrist or psychologist who diagnoses a worker with a mental disorder under section 135(1)(b) of the *Act.*

EFFECTIVE DATE:	December 31, 2003
AUTHORITY:	Section 163 of the *Act*.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. December 31, 2003 – This policy was amended to reflect the amendment of then section 5.1(1) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 and the introduction of then sections 5.1(2) to 4 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.
APPLICATION:	The amended policy applies to injuries on or after December 31, 2003.

#96.00 THE ADJUDICATION OF COMPENSATION CLAIMS

Section 122(1) of the *Act* provides that "Subject to sections 288 and 289 *[appeals to appeal tribunal]*, the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising or required to be determined under the compensation provisions [of the *Act*], and the action or decision of the Board on them is final and conclusive and is not open to question or review in any court."

Section 122(2) of the *Act* provides:

> Without restricting the generality of subsection (1), the Board has exclusive jurisdiction to inquire into, hear and determine the following:
>
> (a) whether a worker's injury has arisen out of or in the course of an employment within the scope of the compensation provisions [of the *Act*];
>
> (b) the existence and degree of a worker's disability by reason of an injury;
>
> (c) the permanence of a worker's disability by reason of an injury;
>
> (d) the degree of impairment of a worker's earning capacity by reason of an injury;
>
> (e) the existence, for the purposes of the compensation provisions [of the *Act*], of the relationship of a family member of a worker;
>
> (f) the existence of dependency in relation to a worker;

(g) the amount of the average earnings of a worker for purposes of payment of compensation;

(h) whether a person is a worker, subcontractor, contractor or employer within the meaning of the compensation provisions [of the *Act*];

(i) the amount of the average earnings of a worker, whether paid in cash or board or lodging or other form of remuneration, for the purpose of levying assessments;

(j) whether an industry or a part, branch or department of an industry is within the scope of the compensation provisions [of the *Act*] . . .;

(k) whether a worker in an industry that is within the scope of the compensation provisions [of the *Act*] is within the scope of those provisions and entitled to compensation under those provisions.

Section 332 of the *Act* provides:

> An action may not be maintained or brought against the Board or a director, officer or employee of the Board in respect of any act, omission or decision
>
> (a) that was within the jurisdiction of the Board, or
>
> (b) that the Board, director, officer or employee believed was within the jurisdiction of the Board.

Section 340 of the *Act* provides:

> Proceedings by or before the Board must not be
>
> (a) restrained by injunction, prohibition or other process or proceeding in any court, or
>
> (b) removed by certiorari or otherwise into any court.

EFFECTIVE DATE: March 3, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Amended to reflect the new wording of then section 96(1) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

#96.10 Policy of the Board of Directors

Section 319 provides that the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting occupational health and safety, compensation, rehabilitation and assessment. While Board officers and the

Workers' Compensation Appeal Tribunal ("WCAT") may make decisions on individual cases, only the Board of Directors has the authority and responsibility to set the policies of the Board.

The Board of Directors' Bylaw re Policies of the Board of Directors, provides that as of February 11, 2003, the policies of the Board of Directors consist of the following:

"(a) The statements contained under the heading "Policy" in the *Assessment Manual*;

(b) The *Occupational Safety and Health Division Policy and Procedure Manual*;

(c) The statements contained under the heading "Policy" in the *Prevention Manual*;

(d) The *Rehabilitation Services & Claims Manual* Volume I and Volume II, except statements under the headings "Background" and "Practice" and explanatory material at the end of each Item appearing in the new manual format;

(e) The *Classification and Rate List*, as approved annually by the Board of Directors;

(f) *Workers' Compensation Reporter* Decisions No. 1 – 423 not retired prior to February 11, 2003 (see Appendix 1); and

(g) Policy decisions of the former Governors and the former Panel of Administrators still in effect immediately before February 11, 2003."

The Bylaw further provides that after February 11, 2003, the policies of the Board of Directors consist of the documents listed above, amendments to policy in the policy manuals, any new or replacement manuals issued by the Board of Directors, any documents published by the Board that are adopted by the Board of Directors as policies of the Board of Directors, and all decisions of the Board of Directors declared to be policy decisions. As of December 31, 2003, the Board of Directors' policies do not include the *Occupational Safety and Health Division Policy and Procedure Manual*. As of December 11, 2013, the Board of Directors' policies do not include any of *Workers' Compensation Reporter* Decisions No. 1 – 423.

The Bylaw also directs that in the event of a conflict between policies of the Board of Directors:

(a) if the policies were approved by the Board of Directors on the same date, the policy most consistent with the *Act* or Regulations is paramount.

(b) if the policies were approved on different dates, the most recently approved policy is paramount.

The Bylaw directs that the policies of the Board of Directors are published in print. It also states that the policies may also be published through an accessible electronic medium or in some other fashion that allows the public easy access to the policies of the Board of Directors.

The Bylaw provides that the Chair of the Board of Directors supervises the publication of the *Workers' Compensation Reporter.* It will include decisions of the Board of Directors and selected decisions of WCAT. It may also include key decisions of the Courts on matters affecting the interpretation and administration of the *Act* or other matters of interest to the community.

The Bylaw makes clear that WCAT decisions do not become policy of the Board of Directors by virtue of having been published in the *Workers' Compensation Reporter*. It states that WCAT decisions are published in the *Reporter* to provide guidance on the interpretation of the *Act*, the Regulations and Board policies, practices and procedures.

EFFECTIVE DATE: March 3, 2003
AUTHORITY: BOD Resolution No. 2003/02/11-04.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Deleted references to how policy is to be applied.

#96.21 Preliminary Determinations

A preliminary determination on a claim will be made, to provide temporary financial relief to the worker until the Board receives the information necessary to make a decision on the validity of the claim, when the following conditions are present:

1. The worker appears to be currently disabled from work.

2. On the available evidence, it appears probable that the worker has a compensable injury or occupational disease, or at least it appears that the evidence is evenly weighted.

3. There is some significant delay in obtaining evidence necessary to arrive at a conclusion on the validity of the claim, and the Board is unable to avoid that delay.

4. The worker is not causing the delay.

5. The delay appears to be causing an interruption of income for the worker. For example, the case is not one in which the worker is still being paid by the employer or another source.

6. The claim is not a third party one. (See Chapter 16.)

7. An application for compensation has been received.

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 122 and 346 of the *Act.*
CROSS-REFERENCES:	#97.00, *Evidence*; #99.00, *Disclosure of Information*; #99.23, *Unsolicited Information*; #99.35, *Complaints Regarding File Contents*, 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. 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 342 of the *Act* provides:

> (1) The Board has the same powers as the Supreme Court
>
> (a) to compel the attendance of witnesses and examine them under oath, and
>
> (b) to compel the production and inspection of records and things.
>
> (2) The Board may require depositions of witnesses residing in or out of British Columbia to be taken before a person appointed by the Board and in a manner similar to that established by the Rules of the Supreme Court for the taking of depositions in that court.

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
AUTHORITY:	Section 342 of the *Act*.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

March 3, 2003 – Amended to reflect the new wording of then section 87 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

#98.11 Powers of Officers of the Board

Section 341 provides:

> The Board may act
>
> (a) on the report of any of its officers, and
>
> (b) in relation to an inquiry under this Part [Part 8 of the *Act* – Workers' Compensation Board and General Matters], on the report of the person making the inquiry as to the result of the inquiry.

Section 346 provides:

> (1) If the Board considers that an inquiry is necessary, the inquiry may be made by an officer of the Board or by another person appointed by the Board to make the inquiry.
>
> (2) For the purposes of an inquiry under this section, the person making the inquiry has the powers conferred on the Board under section 342 *[authority to compel witnesses and production of evidence]*.

Section 348 provides:

> An officer of the Board or person authorized by the Board to make an inquiry under section 346 or 347 may
>
> (a) require and take affidavits, affirmations or declarations as to any matter of the inquiry,
>
> (b) take affidavits for the purposes of this Act, and
>
> (c) in relation to these, administer oaths, affirmations and declarations and certify that they were made.

The Board has ruled that, for the purpose of Division 5 of Part 8 of the *Act* – *Board Inquiry Powers* − 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 the compensation provisions of the *Act*, appointed officers of the Board.

EFFECTIVE DATE: March 3, 2003
AUTHORITY: Sections 341, 346, and 348 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

March 3, 2003 – Amended to reflect the new wording of then section 88 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

#98.12 Examination of Books and Accounts of Employer

Section 347 provides:

(1) The Board, an officer of the Board or a person authorized by the Board for this purpose may examine the books and accounts of an employer and make any other inquiry the Board considers necessary to determine any of the following:

(a) whether an industry or person is within the scope of the compensation provisions [of the *Act*];

(b) the amount of the payroll of the employer;

(c) whether a statement provided to the Board under section 245 *[employer to provide estimate of payroll]* is an accurate statement of the matters that are required to be stated in it.

(2) For the purpose of an inquiry under this section, the Board or person authorized to make the inquiry may give notice in writing to an employer or agent of the employer requiring the employer to bring or produce before the Board or person, at a time and place specified in the notice, records in the possession, custody or power of the employer touching or in any way relating to or concerning the subject matter of the inquiry referred to in the notice.

(3) The time specified in a notice under subsection (2) must be at least 10 days after the notice is given.

(4) An employer or agent named in and served with a notice under subsection (2) must, at the time and place specified in the notice, produce all records in accordance with the notice.

(5) A person who does any of the following commits an offence:

(a) obstructs or hinders the making of an inquiry under this section;

(b) refuses to permit such an inquiry to be made;

(c) neglects or refuses to produce the required records at the time and place specified in the notice under subsection (2).

The maximum fine for committing this offence is set out in Appendix 5.

AUTHORITY: Section 347 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#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.

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
CROSS REFERENCES: Policy item #109.10, *Workers' Advisers*;
Policy item #109.20, *Employers' Advisers*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: January 1, 2015 − Consequential amendments were made arising from changes to Chapter 10, *Medical Assistance, Rehabilitation Services & Claims Manual*, Volume II.
June 1, 2009 – Deleted references to Medical Advisor and officers.
March 3, 2003 – Deleted 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 122 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.

AUTHORITY: Section 122 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#98.21 Place of Inquiry

For the purposes of claims adjudication, an officer of the Board may enter premises and make such inspections as considered necessary, notwithstanding that another agency

question should be referred to the interviewer conducting the inquiry who, in turn, can relay the question if it is felt it would be helpful.

Cross-examination may, however, sometimes be permitted.

AUTHORITY: Section 122 of the *Act*.

#99.00 DISCLOSURE OF INFORMATION

The Board, for the purposes of administering the *Act*, collects and maintains information for the purpose of adjudication and managing claims for workers or their dependants. In order to carry out all aspects of this activity, the Board in a variety of situations discloses information contained in claim files.

Provincial legislation, known as *Freedom of Information and Protection of Privacy Act ("FIPPA")* provides access for the public to the information maintained by the Board while at the same time protecting personal privacy.

FIPPA differentiates among "personal information", information relating to third party business interests and other types of information in the possession of a Public Body such as the Board. Personal information means recorded information about an identifiable individual.

Freedom of information and protection of privacy can be competing principles in many situations. Which principle is to be paramount in any particular case is sometimes difficult to determine. Until advised otherwise by the Information and Privacy Commissioner appointed under section 37 of *FIPPA*, openness prevails as far as possible in the area of compensation services. Exceptions to access should be narrowly construed. Since claim files deal with an identifiable individual, they contain personal and sensitive information. The privacy provisions of *FIPPA* will, therefore, prevail other than for the specific exceptions contained in *FIPPA*. Examples of such exceptions include the rights in section 3(2) of a party to a proceeding to access information, or the variety of exceptions listed in sections 33.1 and 33.2 such as the need to comply with the requirements of a specific enactment of British Columbia or Canada.

Sections 271 and 295 of the *Act* require a copy of records related to a matter under review or appeal to be provided to the parties to a review or appeal.

Section 3(2) of *FIPPA* states that the *Act* does not limit the information available by law to a party to a proceeding. A proceeding does not take place until either the worker or the employer has initiated a formal review or appeal.

Before a review or appeal is initiated, the Board must apply *FIPPA* to requests for claim information. Before a review or appeal is initiated, an employer is not entitled to a copy of the worker's claim file. Disclosure to an employer in such circumstances, is limited to that information necessary for the adjudication or administration of the claim, that is on a "need to know" basis. Once a review or appeal has been initiated, full disclosure is

available to either a worker or an employer. These disclosure rules are considered to be in accordance with *FIPPA* and the rules of natural justice.

Requests for disclosure for information in a situation not covered by the policies in this *Manual* should be directed to the FIPP Department of the Board. These requests will be considered on an individual basis in accordance with *FIPPA.*

Dispute Resolution

A request for a review of the FIPP Department's decision by the Information and Privacy Commissioner may be made within 30 days of the date the person asking for the review is notified of the latest decision.

The Chair of the board of directors has ultimate responsibility within the Board for implementation of *FIPPA* for the purposes of workers' compensation.

EFFECTIVE DATE:	June 1, 2009
AUTHORITY:	Sections 235, 271, and 295 of the *Act*.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted references to Manager and Service Delivery Locations. March 3, 2003 – Reference added to the provision of copies of records related to a matter under review or appeal.
APPLICATION:	Applies on or after June 1, 2009.

#99.10 Disclosure of Issues Prior to Adjudication

If a claim is protested by an employer, the Board is required to investigate the matter. In most cases this investigation involves contact with the worker. Normally, most workers at that time become aware of the protest. In some situations a protested claim may be quickly resolved and the claim accepted. In such cases workers may not be aware of the protest.

As part of the investigation which precedes a decision to disallow a claim, the Board in virtually every case will have communicated with the worker. These communications may be by telephone, in person or in writing. Through the medium of these communications the worker is made aware of the nature of the problem and has an opportunity for input and comment. If, however, for some reason the Board concludes that a claim may not be acceptable, the worker is contacted before a decision is reached. The contact provides the worker with an opportunity for input and comment. In situations involving serious cases or complex issues where no prior contact has been made with the worker, the details should be communicated in writing. Where this is done, the possibility of obtaining assistance from a union official or other adviser may be brought to the worker's attention.

Written authorization is required in order to release information to any advocate, representative or other person designated by the worker or employer. Once received, the Board will cooperate with and notify workers' or employers' advocates or

#99.24 Notification of Permanent Disability Benefits

When permanent disability benefits are granted, the letter advising of the compensation will include the permanent functional impairment evaluation report on which the benefits have been based. It will also contain the percentage rate of disability assessed. If the case is one of Proportionate Entitlement, the letter will state the nature and extent of the pre-existing disability and the nature and extent of the further disability. A copy of the letter is sent to the employer. This letter will include information regarding the relevant rights of review and/or appeal.

Other than to the employer or the worker, the amount being paid per month for permanent disability benefits will only be disclosed to public or private agencies in accordance with the criteria for disclosure as set out in policy item #99.50.

The amount of the capital reserve is disclosed to the employer when notified of the permanent disability benefit. The reserve amounts will be given to the worker on request.

EFFECTIVE DATE: March 3, 2003

CROSS REFERENCES: Policy item #44.00, *Proportionate Entitlement*;
Policy item #44.10, *Meaning of Already Existing Disability*;
Policy item #44.20, *Wage-Loss Benefits and Health Care Benefits*;
Policy item #44.30, *Permanent Disability Benefits*;
Policy item #44.31, *Application of Proportionate Entitlement*;
Policy item #99.50, *Disclosure to Public or Private Agencies*, 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.
March 3, 2003 – Amended regarding references to review and appeal.

#99.30 Disclosure of Claim Files

The claim file is the master file for recording information used in the adjudication and administration of a claim. Information may exist outside of the claim file. However, all evidence used in the adjudication of the claim is contained in the claim file. Medical opinions, as well as any further comments, are all recorded on, and become part of, the claim file.

Sensitive personal information that is received, which has not been specifically requested and which is not relevant to the adjudication or administration of the claim will not become part of the claim file. It will normally be destroyed. However, where the original document is still in the Board's possession, it will be returned to the sender when requested by the worker or sender.

Discretion is necessary in documenting the file to ensure that rumour or innuendo is not mistakenly reported as fact where it is unsupported or cannot be verified. Comments regarding claimants, employers and other persons involved in the claim are confined to relevant matters which have been observed personally or for which there is other

supporting evidence. Observations should be confined to the particular circumstances of the claim or other matter and should not make general comments about an individual's personality. Comments should be worded in the least offensive way possible and avoid derogatory terms.

In recognition of the sensitive nature of sexual assault claims where the employer is alleged to be the perpetrator of the assault, all such cases, regardless of the residence of the worker, are assigned to the Sensitive Claims Area. Disclosure of these claim files for review or appeal and other legal purposes is administered by the Sensitive Claims Area.

EFFECTIVE DATE: June 1, 2009
HISTORY: June 1, 2009 – Deleted references to Adjudicator, Board officers, physicians, Board Medical Advisors, Manager and Board staff.
March 3, 2003 – Inserted reference to review.
APPLICATION: Applies on or after June 1, 2009.

#99.31 Eligibility for Disclosure

Disclosure of their claim files is provided to a worker or dependant on request. Only one copy is provided and no fee is charged for this disclosure.

After a review or appeal has been initiated, an employer may obtain disclosure. An employer may obtain disclosure even though the worker has not requested disclosure.

Disclosure will be provided to the representative of the employer or worker if authorized in writing.

Where there is a valid review or appeal in process regarding a matter arising under a claim to which another claim is also relevant, disclosure to the employer will also be allowed of the other claim. However, there must be a request for disclosure of that particular claim. The Board will not accept requests of a general nature for any files which may be relevant to the reviewable or appealable decision or the issue under review or appeal.

A worker may submit a request for update disclosure where information has been added to the file since the previous disclosure. Where disclosure has been granted to a worker, dependant or employer in situations involving a review or appeal, file updates are automatically provided up to the time the review or appeal is heard. The file may be inspected if it is so desired.

EFFECTIVE DATE: March 3, 2003
AUTHORITY: Sections 271 and 295 of the *Act*.
HISTORY: March 3, 2003 – Amended regarding reference to review.

Information and Protection of Privacy Act and any of the Board's policies and procedures relating to the confidentiality of personal information.

#100.00 REIMBURSEMENT OF EXPENSES

Set out below are the rules relating to the reimbursement of expenses for people attending at the Board or elsewhere in connection with claims or Review Division inquiries.

The principles relating to expenses incurred in connection with medical examinations and treatment and vocational rehabilitation programs are dealt with in Item C10-83.00 and Item C10-83.10.

The Board may be ordered by the Workers' Compensation Appeal Tribunal to pay certain expenses. Section 7 of the *Workers Compensation Act Appeal Regulation* (B.C. Reg. 321/2002) provides that the Board may be ordered by the Workers' Compensation Appeal Tribunal to reimburse a party to an appeal under Part 7 of the *Act* for the following kinds of expenses:

- expenses associated with attending an oral hearing or otherwise participating in a proceeding, if the party is required by the Workers' Compensation Appeal Tribunal to travel to the hearing or other proceeding;
- expenses associated with obtaining or producing evidence submitted to the Workers' Compensation Appeal Tribunal; and
- expenses associated with attending an examination required under section 302(3) of the *Act*.

However, the Workers' Compensation Appeal Tribunal may not order the Board to reimburse a party's expenses where those expenses arise from a person representing the party or the attendance of a representative of the party at a hearing or other proceeding related to the appeal.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	Section 315 of the *Act*.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. January 1, 2015 − Consequential amendments were made arising from changes to Chapter 10, *Medical Assistance, Rehabilitation Services & Claims Manual*, Volume II. March 3, 2003 – Amended regarding references to the Review Division, the Workers' Compensation Appeal Tribunal and section 7 of the *Workers Compensation Act Appeal Regulation*.
APPLICATION:	To adjudicative decisions on or after the effective date.

#100.10 Workers

In addition to the specific requirements set out below, the worker must satisfy the general requirements in Item C10-83.00 and Item C10-83.10 for the payment of transportation costs and subsistence allowances.

#100.12 Claims or Review Inquiries

Where a worker is attending a claims or review inquiry, the payment of expenses is discretionary. There will be no undertaking to pay expenses and no advance.

1. If the claims inquiry or review results in a decision for the worker, the discretion will normally be exercised in favour of payment. But payment should be refused if it is concluded that the inquiry or review was brought about unnecessarily by the worker.

   For example, payment might be refused on a review where it is concluded that the denial of the claim in the first instance resulted from misleading information supplied by the worker.

2. If the claims inquiry or review results in a decision against the worker, payment of expenses will normally be refused. But payment may be allowed if there is special reason. An example might be, where, although the claim was unfounded, the bringing of the review resulted from misleading reasons for the decision being given in the first instance.

These provisions apply only if people are notified to come for a formal claims or review inquiry. Expenses are not reimbursed for people coming to the Board to make enquiries, or for ordinary discussions.

EFFECTIVE DATE: March 3, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Amended regarding references to review.

#100.13 Amount of Expenses

The amount of expenses paid is calculated in accordance with the rules set out in Item C10-83.00 (transportation costs) and Item C10-83.10 (subsistence allowances for meals, accommodation, and lost time from work where the worker is not already in receipt of wage-loss benefits or vocational rehabilitation benefits from the Board).

HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, including renumbering from policy item #100.14 to policy item #100.13.

#100.14 Worker Resides Outside British Columbia

The general principle stated in Item C10-83.00 is that, where the Board is paying travel costs of a worker located outside British Columbia, it will only pay the portion attributable to travel in British Columbia. This also applies to claims and review inquiries, but there are some exceptions to this principle which apply here.

If a worker resides outside British Columbia and is specifically requested by the Board to attend a claims inquiry or a review by the Review Division, the full cost of the trip will be paid by the Board.

EFFECTIVE DATE: June 1, 2009
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, including renumbering from policy item #100.14 to policy item #100.14.
January 1, 2015 − Consequential amendments were made arising from changes to Chapter 10, *Medical Assistance, Rehabilitation Services & Claims Manual*, Volume II.
June 1, 2009 – Deleted references to Medical Review Panel.
March 3, 2003 – Inserted references to review.
APPLICATION: Applies on or after June 1, 2009.

#100.20 Employers

The expenses of an employer's representative may be reimbursed on the same basis as for a worker, except that compensation for lost time from work is not payable.

Not more than one employer's representative will be eligible for reimbursement for attendance at a claims inquiry or a review by the Review Division unless the second or other representative is needed as an additional witness.

EFFECTIVE DATE: March 3, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, including renumbering from policy item #100.15.
March 3, 2003 – Amended regarding references to the Review Division.

#100.30 Witnesses and Interpreters

The expenses of a witness or interpreter will be paid when they have been subpoenaed or have been requested to attend by the Board.

In other cases, the expenses of an independent witness will be paid where, following the claims inquiry or review by the Review Division, it appears that it was reasonable for the worker or employer as the case may be to have assumed, prior to the claims inquiry or review by the Review Division, that the attendance of the witness would be necessary. (If a worker or employer intends to bring more than two witnesses, or intends to bring any witness from a distance of more than twenty-five miles, they should check first by telephone with the Board.)

Where the expenses of a witness are payable, the amount will be the same as for a worker. A subsistence allowance for income loss under Item C10-83.10 will be paid for lost time from work. The applicable maximum and minimum will be those in effect at the time the lost time is incurred.

EFFECTIVE DATE: June 1, 2009
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
January 1, 2015 − Consequential amendments were made arising from changes to Chapter 10, *Medical Assistance, Rehabilitation Services & Claims Manual*, Volume II.
June 1, 2009 – Deleted reference to officer or review officer.
March 3, 2003 – Inserted reference to the Review Division.
APPLICATION: Applies on or after June 1, 2009.

#100.40 Fees and Expenses of Lawyers and Other Advocates

No expenses are payable to or for any advocate. Nor does the Board pay fees for legal advice or advocacy in connection with a claim for compensation. (See policy item #48.10.) The Board will not pay the legal costs of a worker or employer in connection with court proceedings to challenge a Board decision beyond what it may become subject to pay following the court's decision under the general law of costs.

CROSS REFERENCES: Policy item #48.10, *Solicitors' Liens*, 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.

#100.50 Expenses Incurred in Producing Evidence

If a worker incurs expense in producing evidence of a kind which the Board would have sought had it not been produced by the worker, these expenses will be reimbursed by the Board as an item of administrative cost. In this connection, it makes no difference whether the expense was incurred directly or through a lawyer or other representative. However, confusion should not be made between the expenses incurred by the lawyer or other representative on behalf of the worker and the fees of the lawyer or representative for work done. Only the former are reimbursable.

The cost of medical reports obtained by a worker or employer will also be paid by the Board if, following the claims inquiry or review by the Review Division, it appears reasonable for them or their representative to have assumed, prior to the claims inquiry or review by the Review Division, that the provision of the report was necessary. These costs may be paid even if, after the matter is concluded, it is determined that they had not specifically served to assist in the enquiry.

The Board, in a decision on a claim, refused to pay for medical reports obtained by a worker's lawyer. Although it was a normal and prudent action on the part of a responsible lawyer to seek information in order to acquaint himself properly with the client's problem before pursuing it before the Board, the information contained in the

#100.71 Application for Costs by Dependant

On an application under the predecessor to section 311 of the *Act*, the Board certified that the defendant to a third party action was not an employer under the *Act*. The plaintiff then applied for an order for costs of the proceedings before the Board to be paid by the third party defendant. The Board determined that:

". . . the authority of the Board to enforce payment of an order for costs is limited to an order for payment by an employer, or by a worker. The Third Party in this case is neither an employer nor a worker under [then] Part 1, and the Board has therefore no authority to make an order for costs against the Third Party. It may well be that this limitation under section 100 [now section 343] has a historical explanation that does not reflect any rational policy currently relevant. But it is a clear limitation in the *Act*, and it must therefore be followed."

The question arises whether an award under section 343 can be made in favour of the dependants of a deceased worker. Such an award would not contradict the previous determination, as the person against whom it would be made is an employer under the *Act*. However, it was considered unfair to make such an award if the employer could not get a like award against the dependant. Therefore, an award of costs will not be made in favour of a dependant of a deceased worker against an employer.

EFFECTIVE DATE: March 3, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Amended regarding reference to section 11 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

#100.72 What Costs May Be Awarded?

It would not be reasonable to make an order for costs against a worker or employer in respect of an expense which the Board would not allow under the rules set out in policy item #100.00 to policy item #100.50. Therefore, an award of costs will not include the fees of lawyers and other persons paid to them for advice or advocacy in connection with a claim for compensation.

AUTHORITY: Section 133 of the *Act*.

#100.73 Decisions on Applications for Costs

Only in rare cases will a review by the Review Division be sufficiently without merit to justify an award under section 343.

EFFECTIVE DATE: March 3, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Amended reference to the Review Division.

100.75 Implementation of Review or Appeal Decision Directing Reassessment or Redetermination

It may happen that, instead of reaching a specific finding on a matter, the Review Division or the Workers' Compensation Appeal Tribunal will direct that the Board reassess or redetermine something, for example, permanent partial disability benefits. The Review Division or the Workers' Compensation Appeal Tribunal finding is properly implemented if the reassessment or redetermination is carried out even if the conclusion reached is the same as the one that was previously reviewed by the Review Division or appealed to the Workers' Compensation Appeal Tribunal. However, if the Board officer implementing the Review Division or the Workers' Compensation Appeal Tribunal finding is the same one who made the original decision against which the review or appeal was made, and if that person's decision is still negative, the matter is to be referred to a different Board officer for a second look. If a difference of opinion results from the second look, the decision of the second Board officer will prevail.

If, in addition to directing the reassessment or redetermination, the Review Division or the Workers' Compensation Appeal Tribunal makes some specific findings of fact, for example, that the worker was unable to carry out certain jobs, the Board is bound by those findings.

If the reassessment or redetermination results in no change in the original Board decision, a review or an appeal lies back to the Review Division or the Workers' Compensation Appeal Tribunal, respectively.

EFFECTIVE DATE: June 1, 2009
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted references to Compensation Services Division.
March 3, 2003 – This policy item was moved from Chapter 13 and amended to include references to the Review Division or the Workers' Compensation Appeal Tribunal.
APPLICATION: Applies on or after June 1, 2009.

#100.80 Payment of Claims Pending Appeals

#100.81 Appeals to the Review Division – New Claims

The general practice is that no payment is made on a new claim until there has been an adjudication that the claim is valid.

When a decision is made to allow a claim that has been protested by an employer, the employer will be advised of the decision and reasons, where possible by telephone, and given an opportunity to provide any additional information. This is similar to the requirement in policy item #99.10 that a worker be advised if the indication on a claim is that it may be disallowed. If the decision remains that the claim should be allowed, payments will be commenced immediately and a letter explaining the decision and

- decisions respecting the conduct of a review if the review is in respect of any matter that is not appealable to WCAT under section 288(2)(b) to (e) of the *Act*.

2. The Act

The provisions of the *Act* are too extensive to quote in this Chapter. Readers are referred to Part 6 [*Review of Board Decisions*] and Part 7 [*Appeals to Appeal Tribunal*] of the *Workers Compensation Act* on the following website:

http://www.bclaws.ca/civix/document/id/complete/statreg/19001

POLICY

There is no POLICY for this Item.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	Sections 277 to 314, *Workers Compensation Act*; s. 4, *Workers Compensation Act Appeal Regulation* (B.C. Reg. 321/2002)
CROSS REFERENCES:	Item C13-100, *Reviews and Appeals – General*, 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. New Item resulting from the *Workers Compensation Amendment Act (No. 2), 2002*.

CHAPTER 15

ADVICE AND ASSISTANCE

#109.00 INTRODUCTION

Workers or employers requiring advice or assistance on some aspect of a compensation claim are advised in the first instance to contact the Board. For difficulties that are not resolved by this procedure, the *Act* has established Workers' Advisers and Employers' Advisers.

A worker or employer may also obtain advice and assistance from other sources, for example, trade unions, and employers' associations.

EFFECTIVE DATE:	June 1, 2009
AUTHORITY:	Sections 350, 351, 352, 353, and 354 of the *Act*.
CROSS REFERENCES:	Policy item #109.10, *Workers' Advisers*; Policy item #109.20, *Employers' Advisers*; Policy Item #109.30, *Ombudsperson*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	June 1, 2009 – Deleted references to Adjudicators, Claims Officer and Board officer.
APPLICATION:	Applies on or after June 1, 2009.

#109.10 Workers' Advisers

The duties of a Workers' Adviser are to:

1. give assistance to a worker or dependant having a claim under the *Act*, unless the Workers' Adviser considers the claim has no merit;

2. on claims matters, communicate with or appear before the Board and the Workers' Compensation Appeal Tribunal on behalf of a worker or dependant if the Adviser considers assistance is required; and

3. advise workers and dependants regarding the interpretation and administration of the *Act* or any regulations or decisions made under it.

A Workers' Adviser and staff must have access at any reasonable time to the complete claims files of the Board and any other material relating to the claim of an injured or disabled worker.

A Workers' Adviser and staff must treat the information contained in the claims files as confidential to the same extent as it is so treated by the Board.

EFFECTIVE DATE: March 3, 2003
AUTHORITY: Sections 351, 353(1), and 353(2) of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Changes were made regarding reference to the Workers' Compensation Appeal Tribunal.

#109.20 Employers' Advisers

The duties of an Employers' Adviser are to:

1. give assistance to an employer respecting any claim under the *Act* of

   (a) a worker of the employer, or

   (b) a dependant of such a worker

   unless the Employers' Adviser considers the claim has no merit;

2. on claims matters, communicate with or appear before the Board and the Workers' Compensation Appeal Tribunal on behalf of an employer if the Adviser considers assistance is required; and

3. advise employers regarding the interpretation and administration of the *Act* or any regulations or decisions made under the *Act*.

An Employers' Adviser and staff have the same right of access to the Board's claim files as a Workers' Adviser and are subject to the same obligation of confidentiality. In addition, section 353(3) specifically provides that "An employers' adviser must not report or disclose to an employer information obtained from or at the Board of a type that would not be disclosed to the employer by the Board."

EFFECTIVE DATE: March 3, 2003
AUTHORITY: Sections 352 and 353 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Changes were made regarding reference to the Workers' Compensation Appeal Tribunal.

AUTHORITY: Section 130 of the *Act.*
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#111.26 Failure to Recover Damages

Where the Board is unsuccessful either in total or in part in recovering damages from a third party and the third party has an entitlement to benefits from the Board, the recovery will be made from such benefits. If there is no existing entitlement to benefits, a record of the indebtedness will be made by the Board and should any future entitlement to benefits accrue, a recovery will be made from that entitlement. As a general guideline, this recovery will follow the limits set out in the *Court Order Enforcement Act*. Such limitations would not apply in the case of permanent disability benefits where the indebtedness may be recovered from the permanent disability capital reserve.

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

#111.30 Meaning of "Worker" and "Employer" under Division 3 of Part 3 of the *Act*

In the provisions discussed in policy items #111.10 to #111.24, "worker" and "employer" have the meaning given to them in Chapter 2.

Section 126 defines "worker" for the purposes of Division 3 of Part 3 of the *Act* [Legal Effect of Worker's Compensation System] to include an employer to whom the Board has directed that the compensation provisions of the *Act* are to apply, as if the employer were a worker entitled to personal optional protection.

However, this does not affect status as an employer under this Division in regard to other workers.

The meanings of "employer", "worker", and "employment" for the purpose of Division 3 of Part 3 of the *Act* in claims concerning commercial fishers are discussed in section 14 of the *Fishing Industry Regulations*.

EFFECTIVE DATE: March 18, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 18, 2003 − Deleted reference to the *Workers' Compensation Reporter* Decision No. 223.

#111.50 Federal Government Employees

The provisions discussed in policy items #111.00 to #111.30 above have no application to employees entitled under the *Government Employees Compensation Act*.

Rules similar to those set out in policy items #111.00 to #111.30 are set out in section 148 of that *Act*. In general, the claimant is precluded from suing the government in respect of an employment accident, but must claim compensation. Where the circumstances of the accident give rise to a right of action against someone other than the government, the claimant must elect either to sue that other person or claim compensation. If the claimant does the latter, the government is subrogated to the right of action. These subrogated actions are administered by the Federal Government directly. The Board is not concerned in them.

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

#112.00 INJURIES OCCURRING OUTSIDE BRITISH COLUMBIA

Section 134(1) provides in part that compensation is payable where ". . . personal injury or death arising out of and in the course of a worker's employment is caused to a worker . . ." It places no limitation on the place of injury. On the face of it, it might be held to apply to all employment injuries, whether they occur inside or outside British Columbia. The Board has, however, concluded that the section could not be intended to have such a broad effect. The *Act* only applies to injuries occurring outside British Columbia where its provisions expressly provide for this, or do so by necessary implication. There are two main situations that have to be considered, which are discussed in policy items #112.10 and #112.20.

The payment of health care benefits for costs incurred outside British Columbia is discussed in Item C10-75.10.

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

#112.10 Worker is Working Outside British Columbia

Section 147 provides:

(1) This section applies if

loss benefits and health care benefits are charged to the class of the employer at the time the claim was submitted for the first 10 weeks.

2. Until September 27, 2002, an assessment of the worker's work exposure history was then made and an apportionment of the costs incurred beyond 13 weeks, including the amount of any permanent disability reserve, was carried out. The class of the employer at the time the claim was submitted would be charged with the portion of costs incurred after the 13 weeks, which was attributable to the worker's employment with the employer, provided that that portion exceeded 20% of the total amount. The balance would not be charged to any particular class but would be spread across all classes of industry.

   Effective September 28, 2002, an assessment of the worker's work exposure history is then made and an apportionment of the costs incurred beyond 10 weeks, including the amount of any permanent disability reserve, is carried out. The class of the employer at the time the claim is submitted will be charged with the portion of costs incurred after the 10 weeks, which is attributable to the worker's employment with the employer, provided that that portion exceeds 20% of the total amount. The balance will not be charged to any particular class but will be spread across all classes of industry.

3. Until September 27, 2002, if any portion attributable to any employer at the time the claim was submitted was less than 20%, the costs incurred following 13 weeks were not charged to any employer's class, but would be spread across all classes of industry. To ensure procedural fairness in the event of a request for review or an appeal in cases where the class has changed, decision letters and review and appeal information were sent to the employers' association that best represented the appropriate class and subclass of industry.

   Effective September 28, 2002, if any portion attributable to any employer at the time the claim is submitted is less than 20%, the costs incurred following 10 weeks are not charged to any employer's class, but will be spread across all classes of industry. To ensure procedural fairness in the event of a request for review or an appeal in such situations, decision letters and review and appeal information are sent to the employers' association that best represents the appropriate class and subclass of industry.

4. The apportionment is made by comparing the number of years of exposure with the employer at the time the claim is submitted with the worker's total exposure. No account is taken of varying degrees of exposure which may have occurred at different times.

EFFECTIVE DATE: March 3, 2003
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Changes were made regarding references to review.

#113.21 Silicosis and Pneumoconiosis

If, in the case of silicosis or pneumoconiosis claims, there is exposure to silica dust or other dust conditions in more than one subclass of industry within British Columbia, costs are normally apportioned on the basis of employment records confirming the exposure. Occasionally, it is difficult to be precise about exact periods of exposure because absolute confirmation of employment is not always available many years after the fact. This is because employers may no longer be in business or the worker is unable to provide a complete résumé of employment. Under the circumstances, there may be a few cases where it is unfair to simply use employment records for the charging of costs, particularly if there is other substantive evidence available to support exposure to silica dust in a certain class or classes of industry. The Board therefore has discretion in the apportionment of costs for silicosis or pneumoconiosis claims, where it appears that the sole use of employment records will produce an inequitable result.

The guidelines set out below are followed:

1. Cost for silicosis or pneumoconiosis claims will normally be apportioned on the basis of confirmed periods of employment in industries where there is exposure to silica dust or other dust conditions.

2. If confirmed employment records are unavailable, but there is other substantive evidence to support periods of exposure to silica dust or other dust conditions, the Board has discretion to apportion costs on the basis of the best evidence available.

3. If a worker is entitled to compensation for silicosis or pneumoconiosis under the terms of section 136, 137, 141, 142, or 143 of the *Act*, the costs will be charged to the appropriate class or classes of industry within British Columbia as provided by the *Act*.

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Section 250(1) of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted references to Board officer.
APPLICATION: Applies on or after June 1, 2009.

#113.22 Hearing-Loss Claims

Section 250(2) of the *Act* provides that "If compensation is paid under section 145 *[non-traumatic hearing loss]* in relation to a worker's hearing loss caused by exposure to causes of hearing loss in 2 or more classes or subclasses of industry in British

(ii) at other times as required by Board regulation of general application or by an order of the Board limited to a specific employer

(d) provide to the Board certified copies of reports of the employer's payrolls, on or after the end of each calendar year and at the other times and in the manner required by the Board.

Under section 263(4), if satisfied that the default was excusable, the Board may in a specific case relieve the employer in whole or in part from liability under section 263.

The Board has decided that section 263 applies to claims for fatalities.

The charge made under section 263 is in addition to any ordinary assessments which the employer may be liable to pay for the period prior to the occurrence of the injury.

Policy item #113.30 dealt with the rules followed in charging the costs of claims where an employer is carrying on business in two or more provinces and is required to register in both. If such an employer is not registered in British Columbia at the time of an injury, there may be personal liability for the costs of the claim under section 263 in any situation where, under the provisions of the Interjurisdictional Agreement or otherwise, the employer's class would ordinarily be charged.

EFFECTIVE DATE:	March 18, 2003
AUTHORITY:	Sections 245 and 263 of the *Act*.
CROSS REFERENCES:	Policy item #113.30, *Interjurisdictional Agreements*, of the *Rehabilitation Services & Claims Manual*, Volume II; Item AP1-1-4, *Coverage under Act – Employers*, of the *Assessment Manual.*
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. March 18, 2003 – Changes were made regarding numerical reference to the policy in Item AP1-1-4 of the *Assessment Manual*.

#115.30 Experience Rating Cost Exclusions

Section 247 provides, in part:

(1) The Board must establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class, as the Board considers just.

(2) If the Board considers that a particular industry or plant is circumstanced or conducted such that the hazard or cost of compensation differs from the average of the class or subclass to which the industry or plant is assigned, the Board

(a) must establish a special rate, differential or assessment for that industry or plant to correspond with the relative hazard or cost of compensation of that industry or plant, and

(b) for the purpose referred to in paragraph (a), may also adopt a system of experience rating.

The Board has adopted an experience rating plan (ER) under this section of the *Act*. The plan compares the ratio between an employer's claim costs and assessable payroll with the ratio between the total claim costs and assessable payroll of the employer's rate group. Subject to maximums, discounts are assigned for favourable ratios and surcharges for unfavourable ratios. The discount or surcharge takes the form of a percentage increase or decrease in the usual assessment rate. Details of ER can be found in the policy in Item AP5-247-1 of the *Assessment Manual*.

As a general rule, all acceptable claims coded to a particular employer are counted for experience rating purposes. It makes no difference whether the injury was or was not the employer's fault. There are, however, some types of claim costs which are excluded from consideration. These are:

1. Costs recovered by way of a third party action (see policy item #111.25).

2. Investigation and/or compensation costs paid out prior to the disallow of a claim or reversal of a decision by the Board, or the Workers' Compensation Appeal Tribunal (see policy item #113.10).

3. Costs transferred to the rate group of another employer under section 249 (see policy item #114.10).

4. Costs assigned to the funds created by section 240(1)(c) and (d) (see policy item #114.30, and policy item #114.40).

5. Occupational disease claims which on average require exposure for, or involve latency periods of, two or more years before manifesting into a disability. The diseases presently excluded on this ground are:

   Non-traumatic hearing loss, excluding hearing loss resulting from other injuries

   Silicosis

   Asbestosis

   Other diagnosed pneumoconioses, for example, anthracosis and siderosis

   Pneumoconioses not specifically diagnosed

   Heart disease