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May 2024 Update 2024 – 2

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

This update of the *Rehabilitation Services & Claims Manual* contains amendment in the *Manual* implemented since update 2024 – 1.

The revised policy pages are for:

- Item C4-26.00, *"Date of Injury" For Occupational Disease*
- Policy item #93.21, *Time Allowed for Submission of Application*
- Policy item #93.22, *Application Made Out of Time*
- Housekeeping amendments for the following policies:
  - Item C5-33.00, *Introduction to Compensation For Temporary Disability*
  - Item C5-34.00, *Duration of Wage-Loss Benefits*
  - Item C5-35.00, *Introduction to Return to Work Obligations*
  - Item C5-35.10, *Duty to Cooperate*
  - Item C5-35.20, *Duty to Maintain Employment*
  - Item C11-87.00, *Vocational Rehabilitation − Process*
  - Item C11-88.20, *Vocational Rehabilitation − Work Site and Job Modification*
  - Policy item #93.26, *Obligation to Provide Information*
  - Policy item #99.00, *Disclosure of Information*

A summary is attached, and the amended pages are included as part of the package effective **May 1, 2024**.

These amended pages and the complete manual are available at worksafebc.com/law-policy.

Charmaine Chin
Head of Executive Operations

Attachments

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

SUMMARY OF AMENDMENTS – Update 2024 – 2

Chapter	Policy	Pages	Change
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Chapter 4	Item C4-26.00	Pages 3 to 4 and 7	Amended
Chapter 5	Item C5-33.00	Pages 7 to 8	Housekeeping
	Item C5-34.00	Pages 3 to 4 and 11 to 12	Housekeeping
	Item C5-35.00	Pages 3 to 5	Housekeeping
	Item C5-35.10	Pages 1 to 9	Housekeeping
	Item C5-35.20	Pages 1 to 2, 7 to 8 and 13	Housekeeping
Chapter 11	Item C11-87.00	Pages 1 to 5	Housekeeping
	Item C11-88.20	Pages 1 to 3	Housekeeping
Chapter 12	Policy item #93.21	Pages 12-3 to 12-73	Amended
	Policy item #93.22	Pages 12-3 to 12-73	Amended
	Policy item #93.26	Pages 12-3 to 12-73	Housekeeping
	Policy item #99.00	Pages 12-3 to 12-73	Housekeeping

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

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

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

POLICY

A. GENERAL

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

The date of the worker's first seeking treatment by a physician or qualified practitioner for the occupational disease is used for administrative purposes. For example, this date will be used where there is no lost earnings. Where the worker's condition was not at that time diagnosed as an occupational disease, the relevant date is the date the occupational disease is first diagnosed.

B. TIME LIMITS AND DELAYS IN APPLYING FOR COMPENSATION

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

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

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

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

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

C. APPLICANTS WHO FILE WITHIN THREE YEARS

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

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

Special circumstances are discussed in policy item #93.22.

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

D. APPLICANTS WHO FILE BEYOND THREE YEARS

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

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

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

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

EFFECTIVE DATE:	May 1, 2024
AUTHORITY:	Section 136 of the *Act.*
CROSS REFERENCES:	Item C4-25.00, *Occupational Disease*; Policy item #93.21, *Time Allowed for Submission of Application*; Policy item #93.22, *Application Made Out of Time*; Appendix 2, Schedule 1, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	May 1, 2024 – Policy amended to clarify language related to time limits for applying for compensation for occupational disease. October 21, 2020 – Amended to reflect amendment to limitation period provision in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 – This policy resulted from the consolidation of former policy items #32.50, #32.55, #32.56, #32.57, #32.58, and #32.59, consequential to the implementation of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 – Former policy item #32.50 deleted references to Board officer. October 1, 2007 – Former policy item #32.50 was revised to delete reference to assigning a claim member. March 3, 2003 – Former policy item #32.58 was amended to reflect the new wording of then section 55(3.3). Former policy item #32.59 was revised to reference the Review Division.
APPLICATION:	Applies to all decisions, including appellate decisions, made on or after May 1, 2024.

In cases where the work at which the worker is employed on the day of the injury would not have been available afterward, such as where the worker has no other attachment to the labour force than a single day's work at a polling station during an election, the Board may conclude that there was no actual or potential loss of earnings, and not pay wage-loss benefits. If the evidence shows that the person would not normally be available on the general labour market beyond the day of work on which the person was injured, the Board considers the evidence to rebut the general expectation that a person would have immediately sought new employment, if not for the impairment resulting from the compensable injury, mental disorder, or occupational disease.

The Board would not normally expect a worker to seek other work in situations such as strikes, a statutory holiday, weekends or normal days off, vacations or absences required for medical treatment unrelated to the work injury. The Board does not normally consider those days to be a first working day following the day of the injury in which the worker could be experiencing an actual or potential loss of earnings. If there is evidence that the worker would have undertaken other work but the impairment resulting from the compensable injury, mental disorder, or occupational disease prevented it, the Board may reach the opposite conclusion.

It should be made clear that the above rules only apply at the point of the original lay-off. Once the Board has commenced the payment of wage-loss benefits, it does not normally discontinue them simply because, irrespective of the injury, mental disorder, or occupational disease, the worker would not have been working for some period of time. This applies even in cases where the worker's initial disability resolves, and wage-loss benefits are terminated but the worker subsequently has a recurrence within three years of the compensable injury, mental disorder, or occupational disease. The fact that the worker is, for example, on strike at the time of the recurrence does not bar the payment of wage-loss benefits for temporary disability.

6. EARNINGS USED FOR WAGE-LOSS BENEFITS

The Board uses a worker's average net earnings to calculate the amounts (under both section 191 and 192) of wage-loss benefits it will pay to a worker for temporary disability compensation. In any of these calculations, if prior to the compensable injury, mental disorder, or occupational disease, the worker was engaged in multiple employments, the Board combines the earnings of all employments to calculate, as applicable, the worker's:

- pre-injury earnings;
- pre-injury average net earnings;
- actual post-injury average net earnings; and
- estimated post-injury earnings.

This applies regardless of whether the compensable physical or psychological impairment only disables the worker from one occupation. This applies whether or not the other employments are covered by the compensation provisions of the *Act* or are self-employment. The combined totals are subject to the statutory maximum.

If prior to the compensable injury, mental disorder, or occupational disease, the worker is also the principal of the company that is the employer, the Board's obligations extend only to the losses incurred in the worker's capacity as an employee. Wage-loss benefits cannot be paid to reflect any detrimental effect that the injury may have on the company's business.

7. POSSIBLE DEDUCTIONS FROM WAGE-LOSS BENEFITS

If an employer continues to pay a worker salary, allowances, or benefits while the worker is receiving wage-loss benefits, under section 233(1) the Board may deduct these amounts from the compensation that is otherwise payable to the worker.

If an employer terminates the service of a worker after the worker sustains a compensable injury, mental disorder, or occupational disease, and the employer pays the worker a termination of employment payment required by law (legislative requirement or contractual agreement), the Board does not deduct this amount from the compensation that is otherwise payable to the worker. This is because an uninjured worker would have been free to take any other job that the worker could find, receive full wages in respect of that job, and still be entitled to the termination pay. By the law of British Columbia, the worker is entitled to be paid twice for the period covered by the termination pay. Termination pay is intended to allow for the worker to be in that position.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Section 190, 191, 192, and 193 of the *Act*.
CROSS REFERENCES:	Item C5-33.10, *Wage-Loss Benefits For Temporary Total Disability*; Item C5-33.20, *Wage-Loss Benefits For Temporary Partial Disability*; Item C5-34.00, *Duration of Wage-Loss Benefits* (Section 4.3 If the Worker's Temporary Disability Stabilizes as Permanent); Item C5-34.10, *Payment of Wage-Loss Benefits*; Item C5-35.10, *Duty to Cooperate*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	This policy consolidates former policy items #33.00, #34.10, #34.30, #34.31, #34.32, #34.42, and #35.22, and includes concepts from former policy item #34.40, of the *Rehabilitation Services & Claims Manual*, Volume II, consequential to reformatting and renumbering the policies in Chapter 5. Former policy item #34.42 incorporated portions of *Workers' Compensation Reporter* Decision No. 107, [1975] 2 W.C.R. 42.
APPLICATION:	Applies to all decisions made on or after January 1, 2024.

Section 201(2), in part:

> … the Board may not make a periodic payment to a worker under this Division [Division 6 of Part 4 of the *Act* – Compensation for Worker Disability] if the worker ceases to have the disability for which the periodic payment is to be made.

Section 232(1):

> If a worker is confined to prison, the Board may cancel, withhold or suspend the payment of compensation for the period the Board considers advisable.

POLICY

1. GENERAL

Section 201(2) provides that the Board may not pay compensation to a worker under Division 6 of Part 4 of the *Act* – Compensation for Worker Disability − (temporary, permanent, recurrence, non-traumatic hearing loss, disfigurement, and retirement benefit contribution), if the worker ceases to have the disability for which the periodic payment is to be made.

The nature of a temporary disability may also change, affecting a worker's entitlement under the *Act*.

If the condition for which the worker is receiving temporary disability compensation becomes permanent, the worker is entitled to be assessed for permanent disability benefits. This entitlement is dealt with in Chapter 6.

2. CHANGE IN THE NATURE OF THE WORKER'S TEMPORARY DISABILITY

A worker's entitlement to wage-loss benefits for a temporary disability resulting from a work-related injury, mental disorder, or occupational disease disablement may change in either of the following circumstances.

When the worker's physical or psychological impairment resolves to the point where the Board no longer considers the worker temporarily totally disabled, the worker may be entitled to temporary partial disability wage-loss benefits under section 192. This entitlement is addressed by policy in Item C5-33.20.

If the worker's physical or psychological impairment worsens to the point where the Board considers the worker's temporary partial disability has become temporary totally disabling, the worker may be entitled to temporary total disability wage-loss benefits under section 191. This entitlement is addressed by policy in Item C5-33.10.

3. FACTORS THAT MAY AFFECT ENTITLEMENTS

In general, a worker's entitlement to wage-loss benefits continues once it has started and the worker's temporary disability continues. However, the Board may exercise its authority to reduce or suspend wage-loss benefits under other provisions of the *Act*, in certain circumstances.

3.1 Vacation and Travel

If a vacation period or statutory holiday occurs while a worker is receiving wage-loss benefits, the Board continues to pay those benefits.

If a worker in receipt of wage-loss benefits wishes to travel to another place as part of a vacation or for other reasons, the worker should notify the Board. In general, the Board has no objection to wage-loss benefits being continued while a worker is travelling on vacation. However, if the vacation may hinder or protract recovery because of delayed treatment or the activities planned, the Board may reduce or suspend the worker's compensation if it exercises its discretion under section 154(3)(a) and makes a decision using policy in Item C10-74.00. The Board considers the following:

A. If there is to be a period with no treatment which may protract recovery, the Board advises the worker not to discontinue treatment and that if the worker discontinues treatment, it may affect the worker's entitlement to wage-loss benefits. The Board seeks medical advice before reducing or suspending wage-loss benefits compensation.

B. If the Board considers the activities planned for the vacation may suggest that the worker is not disabled or may protract recovery, the Board advises the worker that participation may affect the worker's entitlement to wage-loss benefits. The Board seeks medical advice before reducing or suspending wage-loss benefits compensation.

3.2 Personal Circumstances

In general, the Board continues to pay wage-loss benefits if a worker temporarily suspends treatment for a compensable injury during a period of temporary disability because of personal reasons, such as a family emergency.

However, the Board uses the policy in Item C10-74.00 to reduce or suspend the worker's compensation for failing to submit to medical or surgical treatment that the Board considers reasonably essential to promote the worker's recovery.

amount of the worker's permanent disability benefits under sections 195 and 196. (See the policy in Item C14-102.01.)

5.2 Impact of Recurrence or Significant Change on Wage-Loss Benefits

If the recurrence or significant change results in a further period of temporary disability within three years of the date of injury, the Board may pay further temporary disability wage-loss benefits. This is so, even if the worker would not have been working for some period during the time of the recurrence or significant change. The fact that the worker is, for example, on strike at the time of the recurrence or significant change, does not prevent the Board from paying wage-loss benefits for temporary disability. The Board uses policy item #70.10 to set the rate for the wage-loss benefits.

If the recurrence or significant change occurs after a lapse of three years following the date of injury, the Board uses policy item #70.20 to determine whether the worker has experienced an actual or potential loss and set the rate for wage-loss benefits.

EFFECTIVE DATE: January 1, 2024

AUTHORITY: Section 201 of the *Act*.

CROSS REFERENCES:
Item C5-33.10, *Wage-Loss Benefits For Temporary Total Disability*;
Item C5-33.20, *Wage-Loss Benefits For Temporary Partial Disability*;
Item C5.34.10, *Payment of Wage-Loss Benefits* (Section 3.1 No Reimbursement of Vacation Pay or Termination Pay);
Item C5-34.20, *Wage-Loss Benefits and Retirement Date*;
Item C6-37.00, *Permanent Total Disability Benefits*;
Item C6-41.00, *Duration of Permanent Disability Periodic Payments*;
Policy item #70.10, *Disability Occurring Within Three Years of Injury*;
Policy item #70.20, *Reopenings Over Three Years*;
Item C10-73.00, *Direction, Supervision, and Control of Health Care*;
Item C10-74.00, *Reduction or Suspension of Compensation*;
Item C11-88.50, *Vocational Rehabilitation – Formal Training*;
Item C14-102.01, *Changing Previous Decisions – Reopenings*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY:
May 1, 2024 – Housekeeping.
This policy consolidates former policy items #34.12, #34.41, #34.50, #34.51, #34.52, #34.53, #34.54, #34.55, and the non-retirement date duration language from former policy item #35.30, and includes concepts from former policy item #34.32, of the *Rehabilitation Services & Claims Manual*, Volume II, consequential to reformatting and renumbering the policies in Chapter 5.
Former policy item #34.51 was amended to reflect amendment to health care provisions of the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), on October 21, 2020; and to delete references to Board officers on June 1, 2009.
Former policy item #34.52 had references to Human Resources and Skills Development Canada updated on June 1, 2009; and policy cross-references and housekeeping changes updated on November 1, 2002.
Former policy item #34.54 had references to Board officers deleted on June 1, 2009; and references to pension review deleted on March 3, 2003.

Former policy items #34.55 and #35.30 were amended to provide guidance regarding the legal issues of standard of proof, evidence, and causation, on February 1, 2020.

APPLICATION: Applies to all decisions made on or after January 1, 2024.

1.3 Suitable Work

Suitable work is work that is safe, productive, and consistent with the worker's functional abilities and skills. Suitable work arrangements may involve duties different from the pre-injury work, or some modification of the pre-injury duties and/or hours of work.

Under the duty to cooperate, the employer must identify suitable work that, if possible, restores the worker's full wages from their pre-injury work, and, where reasonable, make the suitable work available to the worker. If requested by the employer, the worker must assist in identifying suitable work. The duty to cooperate also requires the worker to not unreasonably refuse suitable work, whether it has been made available by the injury employer or another employer.

Under the duty to maintain employment, where a worker is not fit for the essential duties of their pre-injury work, the employer must offer the first suitable work that becomes available.

The terms suitable work and suitable occupation are both used in the *Act*, and in some circumstances the meanings of these terms overlap. Where a worker's disability is temporary, suitable work will generally be considered a suitable occupation for the purposes of determining entitlement under section 192 (see policy in Item C5-33.20). However, where a worker's disability is permanent, suitable occupation includes a focus on the reasonable availability of the work over the long term, and on maximizing the worker's long-term earnings potential (see policy in Item C6-40.00). These considerations are not requirements for the purposes of suitable work.

2. GENERAL

The Board recognizes the value of maintaining an injured worker's positive connection to the workplace. Collaboration between workers and employers, and timely intervention from the Board where required, are essential components to successful recovery and return to work outcomes, and help minimize the disruptive impact of workplace injuries on workers and employers. Sections 154.2 [duty to cooperate] and 154.3 [duty to maintain employment] set out the obligations of workers, employers, and the Board to assist injured workers in their return to, or continuation of, work.

The obligations under sections 154.2 and 154.3 apply only if the worker has been disabled from earning full wages at the worker's pre-injury work because of an injury arising out of and in the course of employment. For the purpose of these obligations, employer means the injury employer, unless otherwise specified. Injury includes an occupational disease and a mental disorder.

This policy introduces the concepts and obligations under the duty to cooperate and the duty to maintain employment, and should be read in conjunction with those policies.

See also policy in Items C5-35.10, C5-35.20, and C5-35.30.

3. DUTY TO COOPERATE

Section 154.2 creates a duty for all employers and workers to cooperate in the timely and safe return to, or continuation of, work (see policy in Item C5-35.10).

The employer must cooperate by contacting and maintaining communication with the worker, identifying suitable work, and providing the Board with relevant information regarding the worker's return to, or continuation of, work. The employer must also cooperate with the worker and the Board by, where reasonable, making available the suitable work it has identified.

The worker must cooperate by contacting and maintaining communication with the employer, assisting with identification of suitable work if requested by the employer, and providing the Board with relevant information regarding their return to, or continuation of, work.

The worker must also cooperate with the Board by not unreasonably refusing suitable work when it has been made available by the injury employer, or by another employer.

4. DUTY TO MAINTAIN EMPLOYMENT

Section 154.3 creates a duty for some employers, in certain situations, to maintain the employment of an injured worker (see policy in Item C5-35.20). Generally, an employer has a duty to maintain employment of a worker if:

- the worker has been employed by the employer for a continuous period of at least 12 months; and
- the employer regularly employs 20 or more workers.

Depending on the circumstances, maintaining employment may involve returning the worker to their pre-injury work, providing alternative work, or providing suitable work.

The duty to maintain employment includes an obligation on the employer to make any change to the work and/or the workplace necessary to accommodate an injured worker, to the point of undue hardship.

5. CONCURRENT DUTIES

Employers with a duty to maintain employment also have a duty to cooperate.

6. CONSEQUENCES FOR FAILURE TO COMPLY WITH OBLIGATIONS

Where a worker fails to comply with the obligations under the duty to cooperate, the Board may reduce or suspend the worker's compensation under section 154.2(6) (see policy in Item C5-35.10).

Where an employer fails to comply with the obligations under either the duty to cooperate or the duty to maintain employment, the Board may levy an administrative penalty under section 154.5. The process for imposing administrative penalties is outlined in policy in Item C5-35.30.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Division 3.1 of the *Act*.
CROSS REFERENCES:	Item C5-33.20, *Wage-Loss Benefits For Temporary Partial Disability*; Item C5-35.10, *Duty to Cooperate*; Item C5-35.20, *Duty to Maintain Employment*; Item C5-35.30, *Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment*; Item C6-40.00, *Section 196 Permanent Partial Disability Benefits*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	May 1, 2024 – Housekeeping change to update internal cross reference. January 1, 2024 – Policy created to implement Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41).
APPLICATION:	Applies to all decisions made on or after January 1, 2024.

RE: Duty to Cooperate **ITEM: C5-35.10**

BACKGROUND

1. Explanatory Notes

This policy provides guidance on the worker and employer's duty to cooperate in the worker's timely and safe return to, or continuation of, work.

In addition to the obligations imposed by section 154.2 of the *Act,* and outlined in this policy, all employers have an obligation to comply with human rights legislation to accommodate workers with disabilities. This obligation is set out in British Columbia's *Human Rights Code*, and, for federally regulated employers, in the *Canadian Human Rights Act*.

2. The Act

Section 154.1:

See Item C5-35.00.

Section 154.2:

(1) An employer must cooperate with a worker and the Board in the worker's early and safe return to, or continuation of, work by doing the following:

(a) subject to subsection (3), contacting the worker as soon as practicable after the worker is injured and maintaining communication with the worker;

(b) identifying suitable work for the worker that, if possible, restores the full wages the worker was earning at the worker's pre-injury work;

(c) providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work;

(d) any other thing required by the Board.

(2) A worker must cooperate with an employer and the Board in the worker's early and safe return to, or continuation of, work by doing the following:

(a) subject to subsection (3), contacting the employer as soon as practicable after the worker is injured and maintaining communication with the employer;

(b) on request of the employer, assisting the employer to identify suitable work for the worker that, if possible, restores the full wages the worker was earning at the worker's pre-injury work;

(c) providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work;

(d) any other thing required by the Board.

(3) The obligations referred to in subsections (1) (a) and (2) (a) do not apply if, having regard to all of the circumstances, contact and communication between the employer and the worker are likely to imperil or delay the worker's recovery.

(4) The Board must determine whether an employer or worker has failed to comply with this section if

(a) the employer or worker notifies the Board of a dispute regarding compliance, and

(b) the dispute cannot otherwise be resolved.

(5) A determination under subsection (4) must be made within 60 days after the Board is notified of the dispute or within a longer period that the Board may determine.

(6) If a worker fails to comply with subsection (2), the Board may reduce or suspend payments of compensation to the worker until the worker complies.

Section 154.4:

(1) If section 154.2 or 154.3 conflicts with a term of a collective agreement that is binding on an employer in relation to a worker, the section in conflict prevails to the extent that it affords the worker a greater benefit than the term of the collective agreement.

(2) Subsection (1) of this section does not operate to displace a term of the collective agreement that deals with seniority.

Section 154.5(1):

See Item C5-35.00.

Section 191(1):

Subject to subsection (2), if a temporary total 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 worker's average net earnings.

Section 192(1):

Subject to subsection (2), 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.

POLICY

1. GENERAL

The Board supports timely and safe return to, or continuation of, work as an important component of a worker's rehabilitation, and recognizes the value of maintaining an injured worker's positive connection to the workplace.

2. WHEN DUTY TO COOPERATE APPLIES

The duty to cooperate under section 154.2 of the *Act* applies to an employer and a worker of the employer if, because of an injury that arose out of and in the course of the worker's employment, the worker has been disabled from earning full wages at the work at which the worker was employed at the time of the injury. In this policy, employer means the injury employer, unless otherwise specified. Injury includes an occupational disease and a mental disorder.

The duty to cooperate applies to an employer regardless of whether the duty to maintain employment under section 154.3 applies.

Where section 154.2 conflicts with a term of a collective agreement governing the relationship between the worker and the employer, section 154.2 prevails to the extent that it affords the worker a greater benefit than the term of the collective agreement. However, this does not displace a term of the collective agreement that deals with seniority.

3. DUTY TO COOPERATE

The employer and the worker must cooperate with each other and with the Board in the worker's early and safe return to, or continuation of, work.

The employer must cooperate by:

- contacting the worker as soon as practicable after the worker is injured. As soon as practicable means as soon as is reasonably capable of being done.
- maintaining communication with the worker. This means maintaining communication during the worker's recovery, as appropriate in the circumstances.
- identifying suitable work for the worker that, if possible, restores the full wages the worker was earning at the worker's pre-injury work.
- providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work.

The worker must cooperate by:

- contacting the employer as soon as practicable after the worker is injured. As soon as practicable means as soon as is reasonably capable of being done.
- maintaining communication with the employer. This means maintaining communication during the worker's recovery, as appropriate in the circumstances.
- on request of the employer, assisting the employer to identify suitable work that, if possible, restores the full wages the worker was earning at the worker's pre-injury work.
- providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work.

Sections 154.2(1)(d) and 154.2(2)(d) enable the Board to create any other requirements of an employer or a worker to elicit their cooperation with each other and with the Board in the worker's early and safe return to, or continuation of, work. For the purposes of these sections, the Board requires:

- the employer to cooperate with the worker and Board by, where reasonable, making available suitable work the employer has identified; and

- the worker to cooperate with the Board by not unreasonably refusing suitable work when it has been made available by any employer, which generally means an employer with whom the worker has an existing employment relationship.

The worker and the employer do not have to contact or maintain communication with each other if, having regard to all of the circumstances, the contact and communication are likely to imperil or delay the worker's recovery.

4. SUITABLE WORK

4.1 Suitable Work – General

Suitable work is work that is safe, productive, and consistent with the worker's functional abilities and skills. More specifically:

- The work must be safe, in that it does not pose a health and safety risk to the worker (i.e., it will neither harm the worker nor slow recovery) or to others.

- The work must be productive; token or demeaning tasks are considered detrimental to the worker's rehabilitation.

- The work must be within the worker's functional abilities and medical restrictions.

- The worker has, or is reasonably able to acquire, the necessary skills, competencies, or qualifications to perform the work.

Suitable work arrangements may involve duties different from the pre-injury work, or some modification of the pre-injury duties and/or hours of work. Consultation with the worker, employer, physicians, qualified practitioners and/or other recognized health care professionals, and the union may be part of identifying suitable work.

4.2 Suitable Work – Duty to Cooperate

The successful development of suitable work arrangements depends on the cooperation of all parties in the workplace. If possible, suitable work should restore the full wages the worker was earning at the worker's pre-injury work.

Suitable work can be made available by the employer on, or soon after, the date of injury, or after the worker has participated in some form of medical treatment or rehabilitation. The worker must not unreasonably refuse suitable work when it has been made available by any employer.

In cases where the worker is not fit to work, or no suitable work is identified or is currently available, the worker and the employer are expected to maintain regular communication, as appropriate, in preparation for a future return to work.

5. DURATION OF THE DUTY TO COOPERATE

The worker and the employer's duty to cooperate in the worker's timely and safe return to, or continuation of, work begins from the date of injury and continues throughout the worker's claim.

Where there is no longer an employment relationship between the worker and the employer, the worker continues to have a duty to cooperate with the Board.

6. BOARD INVOLVEMENT

The worker and the employer are encouraged to work together to resolve disputes regarding compliance with the duty to cooperate.

If the worker or the employer notifies the Board of a dispute which cannot otherwise be resolved, the Board must determine if the worker and/or the employer failed to comply with the duty to cooperate. The Board must make a determination within 60 days after the Board is notified of the dispute, or within a longer period that the Board may determine.

The Board may also determine compliance on its own initiative at any time.

6.1 Board Determinations – Suitable Work and Reasons for Refusal

Where the worker refuses work the employer has made available, the Board first examines whether the work meets the criteria for suitable work. The Board's determination is based on, but not limited to, a detailed description of the work that has been made available, the work requirements, and information outlining the worker's functional abilities and medical restrictions.

Where a worker refuses suitable work, the Board considers the reasons for refusal and determines if they are reasonable. In making this determination, the Board considers the requirements of the work, evidence regarding the worker's functional abilities and medical restrictions, and additional factors or evidence relevant to the case, including but not limited to, transportation and dependant care.

Transportation or dependant care issues may be considered if they impact the worker's ability to accept suitable work due to the workplace injury or a change in the hours and/or location of the work an employer has made available, including (but not limited to) where:

- the ability of the worker to commute to the suitable work location is significantly impacted;

- the distance the worker must travel to get to the suitable work location is significantly greater than the distance to the pre-injury work location; or

- dependant care arrangements would be significantly different from the pre-injury arrangements.

If a worker is working towards an employment objective under a rehabilitation plan, the worker is not expected to accept lower paying suitable work in the interim, if the worker is cooperating in good faith and taking the suitable work would negatively compromise the rehabilitation plan. In these cases, a refusal of suitable work will generally not be considered unreasonable.

Where there is a dispute about whether the work that has been made available is within the worker's functional abilities or medical restrictions, failing to provide details of the work duties to the physician, qualified practitioner, or other recognized health care professional will generally be considered an unreasonable refusal.

Where the Board determines the worker's refusal of suitable work is reasonable, this will not be considered a failure to comply with the duty to cooperate.

7. CONSEQUENCES FOR FAILURE TO COMPLY WITH THE DUTY TO COOPERATE

Failure to comply with the duty to cooperate may result in:

- a reduction or suspension of the worker's compensation payments under section 154.2(6), or

- an administrative penalty on the employer under section 154.5 and as outlined in policy in Item C5-35.30.

7.1 Reduction or Suspension of Benefits

If the Board determines the worker failed to comply with the duty to cooperate, the Board may reduce or suspend the worker's compensation payments under section 154.2(6). The Board must, in all cases, make the worker aware of the reasons for the reduction or suspension of compensation payments.

Generally, when compensation payments are reinstated following a period of reduction or suspension, the payments are reinstated prospectively from the date the worker started complying with the obligations under the duty to cooperate.

7.1.1 Reduction of Benefits for Failure to Comply with Obligation to Not Unreasonably Refuse Suitable Work

The worker has a duty to not unreasonably refuse suitable work when it has been made available by any employer.

If the Board determines the worker's refusal of suitable work is not reasonable, this will generally be considered a failure to comply with the duty to cooperate, and the Board may reduce compensation payments to the worker.

The Board reduces the worker's compensation payments based on the principles of section 192 where the worker's disability is temporary. Compensation payments are generally reduced effective the date the work was suitable and available, as determined by the Board.

Where the worker's disability is temporary, and the worker refuses suitable work for reasons that do not constitute a failure to comply with the duty to cooperate (such as, withdrawing from the workforce for non-compensable health issues) the Board determines benefit entitlement under section 192 (see policy in Item C5-33.20).

If the worker no longer has a temporary disability, and is receiving compensation under section 155, the reduction of compensation payments is determined in accordance with policy in Item C11-88.00.

7.1.2 Suspension of Benefits for Failure to Comply with Other Obligations

This section applies if the worker fails to comply with the following duty to cooperate obligations:

- contacting the employer as soon as practicable after the worker is injured;
- maintaining communication with the employer;
- on request of the employer, assisting the employer to identify suitable work that, if possible, restores the full wages the worker was earning at the worker's pre-injury work; and
- providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work.

The Board does not suspend compensation payments if the worker has taken all reasonable steps to comply. This involves consideration of what a reasonable person would have done in the circumstances.

Before compensation payments are suspended, the Board:

- informs the worker about the duty to cooperate and identifies the specific obligation(s) with which the worker is failing to comply.
- provides the worker with a reasonable opportunity to comply.

If the worker remains non-compliant, the Board issues a decision informing the worker that compensation payments are suspended due to failure to comply with the duty to cooperate. The suspension commences as of the date of the Board's decision.

7.2 Administrative Penalty

If the employer fails to comply with its obligations under the duty to cooperate, the Board may impose an administrative penalty on the employer under section 154.5 in accordance with policy in Item C5-35.30.

The Board generally does not impose an administrative penalty if the employer has taken all reasonable steps to comply. This involves consideration of what a reasonable person would have done in the circumstances.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Sections 154.1, 154.2, and 154.4 of the *Act*.
CROSS REFERENCES:	Item C5-33.20, *Wage-Loss Benefits For Temporary Partial Disability;* Item C5-35.00, *Introduction to Return to Work Obligations*; Item C5-35.20, *Duty to Maintain Employment*; Item C5-35.30, *Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment*; Item C10-83.00, *Transportation*; Item C10-83.10, *Subsistence Allowances*; Item C11-88.00, *Vocational Rehabilitation – Nature and Extent of Programs and Services* of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	May 1, 2024 – Housekeeping change to update internal cross reference. January 1, 2024 – Policy created to implement Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41). Section 154.2 comes into effect on January 1, 2024, and applies as set out in section 13 of Bill 41.
APPLICATION:	Applies to all decisions made on or after January 1, 2024, in relation to a worker who sustained an injury (as defined in section 154.1(1) of the *Act*) on or after January 1, 2022, except that for injuries sustained before January 1, 2024, policy on the obligation to contact referred to in sections 154.2(1)(a) and (2)(a) of the *Act* applies as soon as practicable after January 1, 2024 and not as soon as practicable after the worker is injured.

RE: Duty to Maintain Employment **ITEM: C5-35.20**

BACKGROUND

1. Explanatory Notes

This policy provides guidance regarding an employer's duty to maintain employment.

In addition to the obligations imposed by section 154.3 of the *Act,* and outlined in this policy, all employers have an obligation to comply with human rights legislation to accommodate workers with disabilities. This obligation is set out in British Columbia's *Human Rights Code*, and for federally regulated employers, in the *Canadian Human Rights Act*.

2. The Act

Section 154.1:

See Item C5-35.00.

Section 154.3:

(1) Except as provided in subsection (2), this section applies in relation to an employer and a worker of the employer if the worker has been employed by the employer, on a full- or part-time basis, for a continuous period of at least 12 months before the date the worker was injured.

(2) This section does not apply in relation to the following:

(a) a person who is a worker only because the person is deemed under the Act to be a worker;

(b) an employer who regularly employs fewer than 20 workers;

(c) a class of employers or workers or an industry or class of industries prescribed by the Lieutenant Governor in Council.

(3) If a worker is fit to work but not fit to carry out the essential duties of the worker's pre-injury work, an employer must offer to the worker the first suitable work that becomes available.

(4) If a worker is fit to carry out the essential duties of the worker's pre-injury work, an employer must

(a) offer that pre-injury work to the worker, or

(b) offer to the worker alternative work of a kind and at wages that are comparable to the worker's pre-injury work and wages from that work.

(5) An employer must, to the point of undue hardship, make any change to the work or the workplace that is necessary to accommodate a worker.

(6) An employer's obligations under this section end as follows:

(a) all of the employer's obligations under this section end on the second anniversary of the date a worker is injured if the worker has not returned to work by that date;

(b) the employer's obligation under subsection (4) ends on the second anniversary of the date a worker is injured if, by that date, the worker is carrying out suitable work.

(7) The Board must, if an employer and a worker disagree with each other, determine

(a) whether the worker is fit to carry out suitable work or fit to carry out the essential duties of the worker's pre-injury work, and

(b) whether suitable work is available.

(8) If an employer terminates a worker's employment within 6 months after the worker begins to carry out suitable work or begins to carry out the essential duties of the worker's pre-injury work or alternative work, the employer is deemed to have failed to comply with subsection (3) or (4), as applicable.

(9) Subsection (8) does not apply if the employer can establish, to the Board's satisfaction, that the termination was unrelated to the worker's injury.

(10) The Board must, on the request of a worker, determine whether an employer has failed to comply with this section.

(11) The Board is not required to consider a request under subsection (10) if

(a) the Board considers the request has no merit, or

(b) both of the following apply:

(i) the worker's employment is terminated within 6 months after the worker begins to carry out suitable work or begins to

- alternative work, with or without accommodation, that is comparable to the worker's pre-injury work and wages.

3.1.1 Pre-Injury Work

In some cases, the worker is fit to carry out the essential duties of their pre-injury work without accommodation. In other cases, the worker's functional abilities may impact the worker's performance of an essential duty, or may limit the worker's rate, range, or level of production. If changes to the work and/or the workplace would allow the worker to perform the duty or duties in question, the employer must accommodate the worker to the point of undue hardship.

3.1.2 Alternative Work

Alternative work is a job that is different from, but comparable to, the worker's pre-injury work and wages from that work.

When determining if the alternative work offered is comparable to the pre-injury work, the Board may consider a number of factors in addition to wages, including:

- job duties;
- skills, qualification and experience required;
- degree of physical and cognitive effort required;
- level of responsibility and supervision of other workers;
- rights and privileges associated with the position;
- bargaining unit status;
- geographic location of the alternative worksite;
- hours of work, working conditions, and right to work overtime;
- opportunities for advancement;
- employee benefits including vacation, health care, life insurance and pension benefits; and
- any other factor the Board considers relevant in a particular circumstance.

3.2 Worker Not Fit for Essential Duties

Where the worker is not fit to carry out the essential duties of their pre-injury work (with or without accommodation) but is fit to work in some capacity, the employer must offer the worker the first suitable work that becomes available.

3.2.1 Suitable Work – General

Suitable work means work that is safe, productive, and consistent with the worker's functional abilities and skills. More specifically:

- The work must be safe, in that it does not pose a health and safety risk to the worker (i.e., it will neither harm the worker nor slow recovery) or to others.
- The work must be productive; token or demeaning tasks are considered detrimental to the worker's rehabilitation.
- The work must be within the worker's functional abilities and medical restrictions.
- The worker has, or is reasonably able to acquire, the necessary skills, competencies, or qualifications to perform the work.

Suitable work arrangements may involve duties different from the pre-injury work, or some modification of the pre-injury duties and/or hours of work. Consultation with the worker, employer, physicians, qualified practitioners and/or other recognized health care professionals, and the union may be part of identifying suitable work arrangements.

3.2.2 Suitable Work – Duty to Maintain Employment

Suitable work may be offered while the worker is temporarily disabled or after the worker's condition has stabilized as a permanent condition.

If the Board determines the work offered is not suitable work, the employer must offer to the worker the first suitable work that becomes available.

In determining if suitable work is available with the employer, the Board may consider, among other things, the employer's recruitment activities and patterns on or after the date the worker is fit for suitable work (e.g., job postings, vacancies, or evidence of hirings or transfers).

If the worker unreasonably refuses an offer of suitable work, the Board determines whether the worker failed to comply with the worker's duty to cooperate under section 154.2(2)(d) (see policy in Item C5-35.10).

A worker may be entitled to payments under section 154.3(12) regardless of whether an administrative penalty is imposed upon the employer under section 154.5.

8.2 Administrative Penalty

If the employer fails to comply with its obligations under the duty to maintain employment, the Board may impose an administrative penalty on the employer under section 154.5 in accordance with policy in Item C5-35.30.

The Board will not impose an administrative penalty if the employer has taken all reasonable steps to comply. This involves consideration of what a reasonable person would have done in the circumstances.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Sections 154.1, 154.3, and 154.4 of the *Act*.
CROSS REFERENCES:	Item C5-33.20, *Wage-Loss Benefits For Temporary Partial Disability*; Item C5-35.00, *Introduction to Return to Work Obligations*; Item C5-35.10, *Duty to Cooperate*; Item C5-35.30, *Penalties for Failure to Comply with the Duty to Cooperate or Duty to Maintain Employment*; Item C11-86.00, *Vocational Rehabilitation – Eligibility Criteria*; Item C11-88.30, *Vocational Rehabilitation – Job Search Assistance*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	May 1, 2024 – Housekeeping change to update internal cross reference. January 1, 2024 – Policy created to implement Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41). Section 154.3 comes into effect on January 1, 2024, and applies as set out in section 13 of Bill 41.
APPLICATION:	Applies to all decisions made on or after January 1, 2024, in relation to a worker who sustained an injury (as defined in section 154.1(1) of the *Act*) on or after July 1, 2023, except that policy on section 154.3(8) of the *Act* does not apply in relation to a worker whose employment was terminated before January 1, 2024.

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RE:	Vocational Rehabilitation − Process	ITEM:	C11-87.00

BACKGROUND

1. Explanatory Notes

This policy sets out the vocational rehabilitation process.

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

The vocational rehabilitation process addresses the individual needs and circumstances of each worker.

Consultative Process

The Board functions as a catalyst, coordinator, initiator and expediter of all the disciplines involved in helping a worker to overcome the effects of a compensable injury/occupational disease. This demands a team approach, which involves the injured worker, the Board, medical practitioners, employers, union representatives, other agencies and members of the worker's family.

The rehabilitation process emphasizes ongoing consultation with the worker, the employer and, where applicable, the union, in order to maximize and maintain all opportunities for suitable re-employment.

The consultative process is guided by the Board in response to the worker's determination for vocational success.

While it is up to the Board to assess workers' needs and appropriate levels of rehabilitation assistance, it is ultimately the responsibility of workers to decide their own vocational future.

In order to carry out the disclosure of information necessary to administer this consultative process, a consent from the worker will normally be requested in advance.

Operational Process

The rehabilitation process involves five sequential phases of vocational exploration. The Board expedites this process in accordance with the vocational rehabilitation principles and goals.

PHASE I

Principle:

All efforts will be made to help the worker return to the same job with the same employer. Under the *Act*, some employers have a duty to maintain the employment of an injured worker, and to make any change to the work and/or the workplace that is necessary to accommodate a worker, to the point of undue hardship (see Item C5-35.20).

Rationale:

The worker returns to a known environment, maintains seniority and company benefits and, where applicable, remains in the same union. The employer benefits by virtue of retaining a trained and experienced employee.

Method:

Programs of physical conditioning, work assessment, refresher training or skill upgrading may be appropriate.

PHASE II

Principle:

Where the worker cannot return to the same job, the employer will be encouraged to accommodate job modification or alternate in-service placement. Under the *Act*, some employers have a duty to maintain the employment of an injured worker, and to make any change to the work and/or the workplace that is necessary to accommodate a worker, to the point of undue hardship (see Item C5-35.20).

Rationale:

As in Phase I, the worker and the employer mutually benefit from the continuation of the employment relationship.

Method:

Programs relevant to Phase I may be appropriate. In addition, work site/job modification and/or supplementary skill development involving training-on-the-job and/or formal training may be required.

PHASE III

Principle:

Where the employer is unable to accommodate the worker in any capacity, vocational exploration will progress to suitable occupational options in the same or in a related industrial sector, capitalizing on the worker's directly transferable skills.

Rationale:

The worker returns to a known or related industry**,** which best utilizes existing skills to optimize occupational potential. This may also allow the worker to retain union status where applicable.

Method:

The programs relevant to the preceding phases may be applicable. In addition, job search assistance may be indicated.

PHASE IV

Principle:

Where the worker is unable to return to alternate employment in the same or related industry, vocational exploration will progress to suitable occupational opportunities in all industries, recognizing the worker's inventory of transferable skills, aptitudes and interests.

Rationale:

The worker returns to suitable employment in a different industry, which best utilizes existing skills to optimize occupational potential.

Method:

All programs relevant to the preceding phases may apply.

PHASE V

Principle:

Where existing skills are insufficient to restore the worker to suitable employment, the development of new occupational skills will be considered.

Rationale:

The worker is equipped with new marketable skills with a view to optimizing occupational potential.

Method:

Training programs will be considered for the development of new occupational skills. Programs relevant to the preceding phases may apply to help the worker secure employment once trained.

EFFECTIVE DATE: January 1, 2024

AUTHORITY: Section 155 of the *Act*.

CROSS REFERENCES:
Item C5-35.10, *Duty to Cooperate*;
Item C5-35.20, *Duty to Maintain Employment*;
Item C11-85.00, *Vocational Rehabilitation − Principles and Goals*;
Item C11-88.00, *Vocational Rehabilitation − Nature and Extent of Programs and Services*;
Item C11-88.10, *Vocational Rehabilitation − Work Assessments*;
Item C11-88.20, *Vocational Rehabilitation − Work Site and Job Modification*;
Item C11-88.30, *Vocational Rehabilitation − Job Search Assistance*;
Item C11-88.40, *Vocational Rehabilitation − Training-on-the-Job*;
Item C11-88.50, *Vocational Rehabilitation − Formal Training*;
Item C11-88.60, *Vocational Rehabilitation − Business Start-ups*;
Item C11-88.70, *Vocational Rehabilitation − Legal Services*;
Item C11-88.80, *Vocational Rehabilitation − Preventative Rehabilitation*;
Item C11-88.90, *Vocational Rehabilitation − Relocation*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY:
May 1, 2024 − Housekeeping change to update internal cross reference.
January 1, 2024 − Policy changes made consequential to implementing Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41).
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.
November 1, 2002 − Reformatted and revised policy to set out the vocational rehabilitation process and the five sequential phases of vocational exploration. Replaced policy items #87.10 and #87.20 of the *Rehabilitation Services & Claims Manual*, Volume II. Applies 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 to all decisions made on or after January 1, 2024.

RE:	Vocational Rehabilitation − Work Site and Job Modification	ITEM:	C11-88.20

BACKGROUND

1. Explanatory Notes

This policy describes work site and job modification.

Under section 154.3, some employers must make any change to the work and/or the workplace that is necessary to accommodate a worker, short of undue hardship.

In addition to the obligations imposed by section 154.3, all employers have an obligation to comply with human rights legislation to accommodate workers with disabilities. This obligation is set out in British Columbia's *Human Rights Code*, and for federally regulated employers, the *Canadian Human Rights Act*.

2. The Act

Section 154.3, in part:

(1) Except as provided in subsection (2), this section applies in relation to an employer and a worker of the employer if the worker has been employed by the employer, on a full- or part-time basis, for a continuous period of at least 12 months before the date the worker was injured.

(2) This section does not apply in relation to the following:

(a) a person who is a worker only because the person is deemed under the Act to be a worker;

(b) an employer who regularly employs fewer than 20 workers;

(c) a class of employers or workers or an industry or class of industries prescribed by the Lieutenant Governor in Council.

…

(5) An employer must, to the point of undue hardship, make any change to the work or the workplace that is necessary to accommodate a worker.

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 Site and Job Modification

All employers are encouraged to accommodate an injured worker, which includes making any change to the work and/or the workplace that is necessary. The Board may provide assistance to alter work sites or modify jobs to facilitate re-employment.

Some employers have an obligation under section 154.3 to change the work and/or the workplace to the point of undue hardship (see policy in Item C5-35.20). In these cases, if the change would result in undue hardship for the employer, the Board may consider assisting the employer with altering the work site or modifying the job.

Guidelines

Subject to policy in Item C11-88.00, the following guidelines on work site and job modification apply.

1. Assistance of this nature may occur where it is advantageous in returning workers to employment.

2. Modifications are considered and undertaken in consultation with workers, employers, unions and treating professionals.

Expenditures

1. The Board may provide financial assistance for the modification of jobs and work sites, including expenditures for special equipment and/or tools, if appropriate and necessary in facilitating the worker's return to employment.

2. In some instances, it may be appropriate to share the costs of these expenditures with employers.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Section 155 of the *Act*.
CROSS REFERENCES:	Item C5-35.20, *Duty to Maintain Employment*; 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:	May 1, 2024 – Housekeeping change to update internal cross reference. January 1, 2024 – Policy changes made consequential to implementing Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41). April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. November 1, 2002 − Replaced policy items #88.20, #88.21, and #88.22 of the *Rehabilitation Services & Claims Manual*, Volume II.
APPLICATION:	Applies to all decisions made on or after January 1, 2024.

#93.12 Failure to Report

Section 149(5) provides that a "Failure to provide the information required by this *section is a bar to a claim for compensation . . ., unless the Board is satisfied that:*

(a) the information, although imperfect in some respects, is sufficient to describe the worker's injury or disease and the circumstances in which it occurred,

(b) the employer or the employer's representative had knowledge of the injury or disease, or

(c) the employer has not been prejudiced, and the Board considers that the interests of justice require that the claim be allowed."

The evidence may show that it was practicable for a worker to report the injury, mental disorder, or disease to the employer long before such a report was actually made. In such a case, there will be "Failure to provide the information required by this section" within the meaning of section 149(5).

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

#93.20 Application for Compensation

Section 151(1) provides that "An application for compensation must

(a) be made on the form directed by the Board or prescribed by regulation, and

(b) be signed by the worker or the worker's dependant making the application."

Where the Board receives a report that a worker has an injury, mental disorder, or disease which will likely cause a loss of wages, it will automatically forward a Form 6, Application for Compensation and Report of Injury or Occupational Disease. The worker should complete this form and return it to the Board. In the case of someone covered by personal optional protection, the application is made on a Form 6/7, Independent Operator's Application for Compensation and Report of Injury or Occupational Disease, but a Form 6 may also be used.

For applications for compensation in respect of hearing loss, reference should also be made to Section D. of Item C4-31.00. In the case of occupational diseases, reference should be made to policy in Item C4-26.00.

EFFECTIVE DATE: October 21, 2020
CROSS REFERENCES: Item C4-31.00, *Hearing Loss*, Section D., of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: October 21, 2020 – Amended to reflect amendment to limitation period provision in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

APPLICATION: Applies on or after October 21, 2020.

#93.21 Time Allowed for Submission of Application

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

Section 151(2) provides:

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

Section 151(3) provides:

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

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

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

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

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

In the case of occupational diseases, reference should be made to Item C4-26.00.

EFFECTIVE DATE:	May 1, 2024
CROSS REFERENCES:	Item C3-12.00, *Personal Injury*; Item C4-26.00, *"Date of Injury" for Occupational Disease*; Policy item #93.22, *Application Made Out of Time*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	May 1, 2024 − Policy amended to clarify the approach to determine the date of a worker's mental disorder for the purpose of commencing the time limit to apply for compensation. October 21, 2020 − Amended to reflect amendment to limitation period provision in the *Act* by the Workers *Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. December 1, 2013 – Policy amended to clarify that then section 55 of the *Act* applied to claims for compensation of mental disorders under then section 5.1, in the same manner as it is applied to compensation for injuries under then section 5.
APPLICATION:	Applies to all decisions, including appellate decisions, made on or after May 1, 2024.

#93.22 Application Made Out of Time

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

Section 151, in part, provides:

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

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

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

Section 152 of the *Act* provides:

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

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

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

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

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

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

1. Special circumstances must have existed that precluded the application from being filed within that period. "Precluded" in this situation means to have made difficult or otherwise hindered.

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 have an injury, mental disorder, death or disablement from occupational disease.

The following facts illustrate a situation where special circumstances were found to exist. The worker incurred a minor right wrist injury, 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 two years later when the worker began to experience problems with the right wrist that the worker submitted a claim to the Board. It was only then that the worker was incurring monetary losses for which compensation might be appropriate.

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

2. Discretion of the Board

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

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

The exercise of the Board's discretion depends on the extent to which the lapse of time since the injury has prejudiced the Board's ability to carry out the necessary investigations into the validity of the claim. The length of time elapsed will be a significant factor here, together with the nature of the injury, mental disorder, death or disablement from occupational disease. Also significant will be whether there are witnesses or other persons to

whom the worker reported the injury, mental disorder, death or disablement from occupational disease and from whom the worker sought treatment for it who are still able to provide accurate statements to the Board. The Board will not exercise its discretion under section 151(4) in favour of allowing an application to be considered where, because of the time elapsed, sufficient evidence to determine the occurrence of the injury and its relationship to the worker's complaints cannot now be obtained.

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

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

EFFECTIVE DATE: May 1, 2024

HISTORY: May 1, 2024 − Policy amended to clarify special circumstances which may have precluded filing an application for compensation within the time limit.
April 3, 2023 − Housekeeping changes consequential to implementing the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41).
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 Board officer.
March 3, 2003 – Inserted new wording of then section 55(3.3) of the *Workers Compensation Act*, R.S.B.C. 1996, c 492.

APPLICATION: Applies to all decisions, including appellate decisions, made on or after May 1, 2024.

#93.23 Adjudication without an Application

Section 151(2) provides that, "If the Board is satisfied that compensation is payable, it may be paid without an application."

In accordance with this provision, the Board may pay all the compensation due on a claim without first receiving an application from the worker. However, the Board will not normally do this in certain types of cases, notably the following:

1. The employer is objecting to the claim.

2. The claim is doubtful.

3. Permanent disability benefits may result.

4. In personal optional protection cases before wage-loss benefits are payable.

5. Where a preliminary determination under policy item #96.21 is carried out.

6. In third-party and out-of-province cases.

7. Silicosis claims.

8. On fatal claims before compensation in relation to death of a worker can be paid. A decision on the acceptability of the claim and the payment of funeral expenses under section 166 and the lump-sum compensation under section 167 can be made without an application.

Claims are generally not paid without a worker's application form unless there is a report from the employer or other equivalent documentation and a medical report on file. The Board can however exercise discretion if the circumstances warrant a deviation from this requirement.

The Board will not accept a claim and pay compensation if the worker indicates that the worker does not wish to claim.

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 officer. March 3, 2003 – Amended to reference preliminary determinations under policy item #96.21.
APPLICATION:	Applies on or after June 1, 2009.

#93.25 Signature on an Application for Compensation

Section 151(1)(b) provides that an application for compensation must be signed by the worker or the worker's dependant making the application. A teleclaim or online application submitted for compensation by the worker or the worker's dependant satisfies the requirement that an application be signed under section 151(1)(b).

An "X" in lieu of signature is acceptable if the worker is unable to sign because of the injury or is unable to read or write. Such a signature must be countersigned by another adult. It is preferable but not mandatory that the signature should read "witnessed by" followed by the countersignor's signature and address.

If the worker has a condition which prevents the signing of an application, the Board may accept an application signed by someone on the worker's behalf. This might be an adult with a close personal attachment to the worker.

Pursuant to section 121 of the *Act*, unless otherwise disabled, a worker under the age of 19 years can and should sign the application form.

EFFECTIVE DATE:	September 1, 2022
AUTHORITY:	Sections 121 and 151(1) of the *Act*.
CROSS REFERENCES:	Policy item #49.00, *Incapacity of a Worker;* Policy item #93.20, *Application for Compensation;* Policy item #93.21, *Time Allowed for Submission of Application;* Policy item #93.22, *Application Made Out of Time,* of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	September 1, 2022 – Amended to clarify online or teleclaim applications satisfy legislative requirements. Housekeeping changes to update language. April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION:	Applies to all decisions made on or after September 1, 2022.

#93.26 Obligation to Provide Information

Section 153 of the *Act* provides:

> (1) A worker who applies for or is receiving compensation under this Part [Part 4 of the *Act* – Compensation to Injured Workers and Their Dependants] must provide the Board with the information that the Board considers necessary to administer the worker's claim.
>
> (2) If a worker fails to comply with subsection (1), the Board may reduce or suspend payments to the worker until the worker complies.

Section 154.2 (2) of the *Act* provides, in part:

> A worker must cooperate with … the Board in the worker's early and safe return to, or continuation of, work by doing the following:
>
> …
>
> (c) providing the Board with information the Board requires in relation to the worker's return to, or continuation of, work;
>
> …

The Board operates under an inquiry system and as such, reasonable efforts are made to obtain information directly from the source. However, it is recognized that, in the course of administering a claim, the Board may have to rely on a worker to obtain relevant information.

Policy in Item C5-35.10 provides guidance regarding a worker's obligation to provide the Board with information the Board requires in relation to the worker's return to, or continuation of, work. This policy provides guidance regarding a worker's obligation to provide any other information the Board requires to administer the worker's claim.

A worker's obligation to provide information may arise at any time during the claim cycle. Necessary information includes, but is not limited to, information related to the worker's compensable disability, pre- and post-injury earnings, tax status and Canada Pension Plan disability benefits.

The Board will set a timeframe for the worker to provide the necessary information. The timeframe may vary depending upon the nature of the information requested. However, it should not extend past 30 days, except where the Board is satisfied that the worker is making best efforts to obtain the necessary information.

Where the Board requires information from a worker that it considers necessary to administer the worker's claim, notification must be provided in writing. Notification to the worker must specify:

- what information is required;
- the worker's obligation to provide the information;
- the timeframe for compliance; and
- the consequences for failing to comply.

The Board may reduce or suspend a worker's payments if, after providing written notification of the obligation to provide necessary information and the consequences of failing to comply, the worker:

- fails or refuses to supply the information within the specified timeframe; and
- does not have a valid reason for failing to comply.

If a worker has to obtain the information from a third party (e.g. the department continued under the *Department of Employment and Social Development Act* (Employment and Social Development Canada – "ESDC") or the agency continued under the *Canada Revenue Agency Act* (Canada Revenue Agency)), the Board must be satisfied that the worker failed to take all reasonable steps to acquire the information before determining that a worker has failed to comply.

The Board recognizes that, in the course of obtaining requested information from third parties, certain fees may be levied. In these cases, the Board will provide reimbursement for necessary and reasonable costs incurred by the worker.

When a worker fails to fulfill the obligation to provide information, the Board will determine whether there was a valid reason. Payments will not be reduced or suspended for non-compliance if there is a valid reason acceptable to the Board, such as a sudden illness or a death in the family.

Once the worker has fulfilled the obligation to provide information, the Board will restore payments for any period for which they were reduced or suspended.

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

EFFECTIVE DATE: January 1, 2024
CROSS REFERENCES: Item C5-35.10, *Duty to Cooperate*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: May 1, 2024 − Housekeeping change to update internal cross reference.
January 1, 2024 − Policy changes made consequential to implementing Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41).
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 to all decisions made on or after January 1, 2024.

#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 Section 6 of the policy in Item C5-33.00 and the policy in Item C5-33.20.

CROSS REFERENCES: Item C5-33.00, *Introduction to Compensation For Temporary Disability*; Item C5-33.20, *Wage-Loss Benefits For Temporary Partial Disability*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: January 1, 2024 − Housekeeping change to update internal cross references.

#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 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: October 21, 2020
HISTORY: October 21, 2020 – Amended to reflect amendment to employer's reporting obligations provision in the *Act* by the *Workers Compensation Amendment Act*, 2020 (Bill 23 of 2020), in effect August 14, 2020.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 18, 2003 – Deleted references to the *Workers' Compensation Reporter* Decision Nos. 223 and 224.
APPLICATION: Applies on or after October 21, 2020.

#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 *Reports 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;

(d) the worker states an intention to seek medical treatment;

(e) the worker has received medical treatment for the injury;

(f) the worker is unable or claims to be unable by reason of the injury to return to the worker's usual job function on any working day subsequent to the day of injury;

(g) the injury or accident resulted or is claimed to have resulted in the breakage of an artificial member, eyeglasses, dentures, or a hearing aid;

(h) the worker or the Board has requested that an employer's report be sent to the Board.

Section 150(7) provides in part that, ". . . the Board may make regulations as follows:

(a) establishing a category of minor injuries not required to be reported under this section; . . ."

If none of the conditions listed (a) through (h) above are present, an injury is a minor injury and not required to be reported to the Board unless one of those conditions subsequently occurs.

AUTHORITY: Section 150 of the *Act*, and the *Reports of Injuries Regulations*, B.C. Reg. 713/74.

HISTORY: September 1, 2020 – Housekeeping change to correct the title of *Reports of Injuries Regulations*, B.C. Reg. 713/74.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#94.13 Commencement of the Obligation to Report

Section 3 of the *Reports of Injuries Regulations* provides that the obligation of the employer to report the injury to the Board commences when a supervisor, first aid attendant, or other representative of the employer first becomes aware of any one of the conditions listed in section 2 of the Regulations (see policy item #94.12), or when notification of any such condition is received by mail or telephone at the local or head office of the employer.

An employer who protests a claim should take care not to delay the submission of the Form 7 Employer's Report to the Board. If the employer wishes to investigate further, the employer should submit the Form 7 stating that an investigation report will follow, and give reasons for the delay.

AUTHORITY: Section 150(7) of the *Act*;
Reports of Injuries Regulations, B.C. Reg. 713/74.

CROSS REFERENCES: Policy item #94.11, *Form of Report*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: September 1, 2020 – Housekeeping change to correct the title of *Reports of Injuries Regulations*, B.C. Reg. 713/74.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#94.14 Adjudication and Payment without Employer's Report

An employer is always given an adequate opportunity to submit a Form 7 Employer's Report before a claim is adjudicated in its absence. If a claim is adjudicated without a Form 7 Employer's Report and then, after adjudication to allow and pay the claim, the employer's report is received objecting to the acceptability of the claim, the Board will investigate any of the matters raised in the objection. If, following investigation the Board is satisfied that the claim was properly accepted, the employer will be advised of the details and informed of the relevant rights of review and/or appeal. Payments to the worker will be continued during the investigation unless there is evidence suggesting fraud. If, following an investigation:

- within 75 days of when the decision on the claim was made, the Board is satisfied that the claim should not have been accepted based on applicable law and policy, and the merits and justice of the case, the Board may reconsider the decision under section 123(1) of the *Act*; or

- after 75 days of when the decision on the claim was made, where the Board is satisfied the decision contains an obvious error or omission, the Board may reconsider the decision under section 123(3) of the Act.

EFFECTIVE DATE:	October 29, 2020
AUTHORITY:	Section 150(8) of the *Act*.
HISTORY:	October 29, 2020 – Amended to reflect amendments to reconsideration provision in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted references to Board officer. March 3, 2003 – Inserted references to review, appeal and reconsideration.
APPLICATION:	Applies on or after October 29, 2020.

#94.15 Penalties for Failure to Report

Section 150(6) provides that "An employer who fails to make a report required under this section commits an offence unless excused by the Board on the ground that the report, for some sufficient reason, could not have been made." The maximum fine for committing this offence is set out in Appendix 5.

Section 150(8) provides:

> If a report required under this section is not received by the Board within 7 days after an injury or death, or any other time prescribed by regulation under subsection 7, [see policy item #94.13], the Board
>
> (a) may make an interim adjudication of the claim, and
>
> (b) if the Board allows the claim on an interim basis, may begin the payment of compensation in whole or in part.

Section 262(2) provides that "If compensation is paid under section 150(8) before 3 days after the Board receives the report required by that section, that compensation may be levied and collected from the employer by way of additional assessment . . ., and payment may be enforced in the same manner as other assessments."

Section 262(3) provides that if the Board is satisfied that the delay in reporting was excusable, it may relieve the employer in whole or in part of the additional assessment imposed under section 262 of the *Act*.

The Board follows the following procedure for making interim adjudications on claims without employer reports, and levying corresponding assessments.

At the end of each six-month period, a review is undertaken of employers who have been late in filing their reports of injury to the Board. As a result of this review, a first letter may be sent out to defaulting employers informing them of their records over the past six months and warning them of the effect of section 262 of the *Act*. At the end of the following six-month period, any employers who received the initial letter and who continue to default will receive a second letter. This will warn them that, on any future claims if an interim adjudication is made under section 150(8) accepting the claim, they will be charged with the full amount of costs incurred up to the elapse of three days after the Board receives their employer's report.

Prior to charging the cost of any particular claim to an employer under section 262(2), the Board will first send a letter asking if there is any reason why the employer should be excused from the penalty. Following the employer's reply or if there is no reply, the Board will then make a decision and notify the employer.

Set out below are some reasons why employers may be excused for late reporting. These are guidelines only, as each case must be considered individually.

1. The worker lays off some time after the day of the injury and when the days are counted from the date of lay-off to the date of the Form 7's arrival, they number fewer than ten.

2. A report is requested by the Board to start a new claim after investigation of a reopening indicates a new incident. However, the Form 7 must be received within three days from the date the firm is notified of the new claim.

3. The worker does not report the incident to the employer until some time after the lay-off.

4. There is no wage loss involved and the employer was not aware the worker sought medical attention.

5. The decision to accept the claim is made on the 11th day after the injury, and the Form 7 arrived at the Board, but not on file, before the 10th day.

The costs charged to the employer will consist of all health care benefits, vocational rehabilitation, and wage-loss benefits relating to the period in question, even if they are not actually paid until some time afterwards.

The employer will continue to be charged with the costs incurred on claims on which the employer is late in reporting until the overall reporting record is shown to have improved sufficiently at a subsequent six-month review.

The term “interim adjudication” used in this context should not be confused with the term “preliminary determination” when it applies to the processing of payments on an apparently acceptable claim in the absence of some information which is likely to be delayed. The latter procedure is set out in policy item #96.21. The requirements of the preliminary determination procedure do not have to be met for an interim adjudication under section 150(8). It is sufficient if the claim does appear to be an acceptable one and is only being held up by the technicality of the employer’s failure to submit a report.

When the Form 7 Employer’s Report does arrive, it can be considered as evidence in making the final adjudication of the claim. The rules set out in policy item #96.21 regarding the non-recovery of payments made under a preliminary determination also apply here. If the employer’s report protests the acceptance of the claim, but the final adjudication is that it remains allowed, the employer will receive the usual notification of the relevant rights of review and/or appeal.

The above procedure applies to pay employer claims (see Section 3 of the policy in Item C5-34.10) and to employers with deposit accounts, but not to personal optional protection or Federal Government claims.

Unless the Board receives the Form 7 Employer’s Report, the interim adjudication becomes the final decision on the acceptability of the claim and is subject to the provisions of section 123 of the *Act*.

If the Board receives the Form 7 Employer’s Report, the final adjudication becomes the final decision on the acceptability of the claim and is subject to the provisions of section 123 of the *Act*.

The final adjudication does not constitute a reconsideration of the interim adjudication for purpose of section 123 of the *Act*. Section 150(8) contemplates that a final adjudication will be made, whenever the Form 7 Employer’s Report is received.

EFFECTIVE DATE:	October 29, 2020
AUTHORITY:	Sections 150 and 262 of the *Act*.
CROSS REFERENCES:	Item C5-34.10, *Payment of Wage-Loss Benefits* (Section 3 Reimbursing Employers for Amounts Deducted from Compensation); Policy item #94.13, *Commencement of the Obligation to Report*; Policy item #96.21, *Preliminary Determinations*; Item C14-103.01, *Reconsiderations*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	January 1, 2024 − Housekeeping change to update internal cross reference. October 29, 2020 – Amended to reflect amendments to reconsideration provision in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted references to Board officer. March 3, 2003 – Inserted references to preliminary determination and the status of final adjudication for the purposes of then sections 96(4) and (5) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

January 1, 1978 – the Board established a procedure for implementing then sections 54(7) and (8) (to make interim adjudications on claims without employer reports, and to levy assessments paid on these interim adjudications, against employers).

APPLICATION: Applies on or after October 29, 2020.

#94.20 Employer or Supervisor Must Not Attempt to Prevent Reporting

Section 73 of the *Act* provides:

(1) An employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from reporting any of the following to the Board:

(a) an injury or allegation of injury, whether or not the injury occurred or is compensable under the compensation provisions [of the *Act*];

(b) an illness, whether or not the illness exists or is an occupational disease compensable under the compensation provisions [of the *Act*];

(c) a death, whether or not the death is compensable under the compensation provisions [of the *Act*];

(d) a hazardous condition or allegation of hazardous condition in any work to which the OHS provisions [of the *Act*] apply.

(2) An employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from

(a) making or maintaining an application for compensation under the compensation provisions [of the *Act*], or

(b) receiving compensation under the compensation provisions [of the *Act*].

The Board may impose an OHS administrative penalty if it is determined that an employer has violated section 73. The general criteria for calculating OHS administrative penalties are provided in the *Prevention Manual* at Item P2-95-5.

Item P2-95-5 also provides for the recovery of potential or actual benefits obtained from non-compliance.

As an alternative to imposing an OHS administrative penalty, the Board may refer the case to Crown Counsel for consideration of prosecution.

AUTHORITY: Section 73 of the *Act*.
CROSS REFERENCES: Item P2-95-5, *OHS Penalty Amounts*, of the *Prevention Manual*.

HISTORY: January 1, 2024 – Policy changes made consequential to implementing Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41).
November 24, 2022 – Housekeeping changes consequential to implementing the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41).
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 1, 2016 − Consequential housekeeping amendments made to reflect changes to then Item D12-196-6, the *OHS Penalty Amounts*, of the *Prevention Manual*, which became effective March 1, 2016.

APPLICATION: Applies to all decisions made on or after January 1, 2024.

#95.00 RESPONSIBILITIES OF PHYSICIANS/QUALIFIED PRACTITIONERS

Section 163(1)(a) of the *Act* provides that it is the duty of every physician or qualified practitioner attending or consulted on a case of injury to a worker, in any industry within the scope of the compensation provisions of the *Act*, or of an alleged case of such an injury, to provide reports in respect of the injury in the form required by regulation or directed by the Board.

The first report containing all requested information in it must be provided to the Board within three days after the date of the physician's or qualified practitioner's first attendance on the worker.

If treatment continues, progress reports must be provided.

Section 163(1)(b) of the *Act* provides that the physician or qualified practitioner must provide a report to the Board within three days after the worker is, in the opinion of the physician or qualified practitioner, able to resume work and, if treatment is being continued after resumption of work, to provide further adequate reports to the Board.

The duties described in this policy item apply 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

CROSS REFERENCES: Item C10-76.00, *Physicians and Qualified Practitioners*, 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.
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.

#95.10 Form of Reports

The Board has prescribed forms for each type of report, the most common of which are as follows:

Form 8	Physician's First Report
Form 11	Physician's Progress Report
Form 11A	Physician's Report and Account

Similar forms are provided for qualified practitioners and other persons authorized to treat workers under the *Act*.

All medical reports must be signed by the person making the report with reference to the professional designation of a partnership or clinic. A medical report submitted electronically in a form acceptable to the Board satisfies the requirement that medical reports be signed. Any change in status of a partnership or clinic, or change in its address, should be reported to the Board without delay to assure proper direction of payment.

EFFECTIVE DATE:	September 1, 2022
AUTHORITY:	Sections 163 and 164 of the *Act.*
CROSS REFERENCES:	Item C10-75.00, *Health Care Accounts – General;* Item C10-76.00, *Physicians and Qualified Practitioners;* Item C10-77.00, *Other Recognized Health Care Professionals;* Policy item #95.00, *Responsibilities of Physicians/Qualified Practitioners;* Policy item #95.20, *Reports by Specialists;* Policy item #95.30, *Failure to Report,* of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	September 1, 2022 – Amended to clarify that electronic submission of medical forms meets reporting requirements.
APPLICATION:	Applies to all decisions made on or after September 1, 2022.

#95.20 Reports by Specialist

Section 163(1)(c) of the *Act* provides that if the physician is a specialist whose opinion is requested by the attending physician, the worker, or the Board, or if the physician continues to treat the worker after the physician is consulted as a specialist, the physician must provide the first report to the Board within three days after the consultation is completed and, if the physician is regularly treating the worker, the physician must provide further reports to the Board as required in paragraphs (a) and (b) of section 163(1) (see policy item #95.00).

Section 1 of the *Act* defines a "specialist" as "a physician residing and practising in British Columbia and listed by the Royal College of Physicians and Surgeons of Canada as having specialist qualifications."

AUTHORITY:	Sections 1 and 163 of the *Act*.
CROSS REFERENCES:	Policy item #95.00, *Responsibilities of Physicians/Qualified Practitioners*, 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

#95.30 Failure to Report

Section 164(3) of the *Act* provides that physicians, qualified practitioners, or other persons authorized to provide health care under the compensation provisions of the *Act* who fail to submit prompt, adequate and accurate reports and accounts as required by the *Act* or by the Board commit an offence. If a person fails to submit such reports and accounts, section 164(4) provides that the Board may

(a) cancel the right of the person to be selected by a worker to provide health care, or

(b) suspend the person for a period determined by the Board.

If the right of a person to provide health care is cancelled or suspended, section 164(5)(a) provides that the Board must

(i) notify the person of the cancellation or suspension, and

(ii) inform the applicable governing body under the *Health Professions Act*, and

Section 164(5)(b) of the *Act* provides that the person whose right to provide health care is cancelled or suspended must also notify any injured workers who seek treatment from that person of the cancellation or suspension.

The maximum fine for the offence committed under the *Act* is set out in Appendix 5.

The Board may refuse to pay accounts where reports are inadequate.

EFFECTIVE DATE: October 21, 2020
AUTHORITY: Section 164 of the *Act*.
HISTORY: October 21, 2020 – Amended to reflect amendments to the *Act* by the *Workers Compensation Amendment Ac*t, 2020 (Bill 23 of 2020), in effect August 14, 2020.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION: Applies on or after October 21, 2020.

#95.31 Payment of Wage-Loss Benefits without Medical Reports

Wage-loss benefits are normally paid on the basis of medical evidence supporting a disability. This medical evidence is usually in the form of a signed medical report from a physician or a qualified practitioner.

Exceptions can be made in cases of short-term disability where the worker receives brief treatment from a first aid attendant or a hospital emergency department. If the circumstances are in all other respects acceptable, and the facts support the conclusion

that the inability to earn full wages was a result of the injury, then wage-loss benefits may be paid. Normally, wage-loss benefits should not be paid for periods of disability exceeding three days or in any case of occupational disease unless supported by proper medical evidence.

Exceptions can also be made in cases of longer term disability. Where there is evidence to support the existence of a disability, but there has been no receipt of a medical report and where the claim has been adjudicated and accepted, a first payment should be processed on the claim. Moreover, there must be some discretion to depart from the principle that wage-loss benefits are to be paid only on medical confirmation of disability. That confirmation may appear at the time the disability begins, some time during the disability or, in some cases, after it has ceased. The question is always whether the worker was disabled. The best evidence of that disability is almost always medical evidence, but on some occasions, evidence from the worker or from other sources may be sufficient to establish the existence and continuation of the disability.

In summary, if there is acceptable evidence of disability, and that evidence is clearly documented, wage-loss benefits can be paid in the absence of medical reports although these will, in almost all cases, be the most acceptable evidence.

The Board accepts reports received from nurses in remote locations as medical reports if there is no physician in the immediate area.

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

#95.40 Obligation to Advise and Assist Worker

Section 163(1)(d) provides that the physician or qualified practitioner has the duty, without charge to the worker, to give all reasonable and necessary information, advice, and assistance they need to

(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.

The above criteria apply whether or not the claim is protested by the employer.

When a preliminary determination is made, the following rules will apply:

1. Wage-loss benefits will be commenced, with an explanation to the worker, employer and attending physician.

2. Payments of wage-loss benefits under the preliminary determination will commence as of the date when the Board makes the determination. Arrears of wage-loss benefits for any time period prior to that date will not be paid until a decision on the validity of the claim is made, except that the Board may pay such arrears on a preliminary determination to the extent that this may be necessary to avoid hardship.

3. The Board will proceed to obtain the evidence necessary to reach a decision on the claim as soon as possible.

4. Health care benefit bills will not be paid under a preliminary determination. If a preliminary determination has been made on a claim and there has been a request for surgery, it will be handled in the same manner as with other claims that have yet to be formally adjudicated. In such cases, the patient and physician should proceed privately, pending a decision on the claim. This principle also applies with respect to other medical referrals, with the exception of a consultation with a specialist that may be paid on an investigation basis.

5. If a preliminary determination has been made on a claim and payment of wage-loss benefits has commenced, and subsequently a decision is made to disallow the claim, then:

   (a) no recovery of the payments will be made in the absence of fraud or misrepresentation;

   (b) the employer's sector or rate group will be relieved of the cost of any unrecovered payments pursuant to policy item #113.10.

The above rules governing preliminary determinations apply to applications to reopen a previous claim as well as applications commencing new claims.

A preliminary determination made in accordance with this policy is not a "decision" for the purposes of section 123. Rather, it is a Board administrative action that is intended to provide temporary financial relief to the worker until the Board receives the information required in order to make a decision on the validity of a claim. However, once the Board receives the required information and makes a decision, that decision is subject to the provisions of section 123.

EFFECTIVE DATE:	October 29, 2020
CROSS REFERENCES:	Chapter 16 − Third Party/Out-of-Province Claims; Policy item #113.10, *Investigation Costs*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	October 29, 2020 – Amended to reflect amendments to reconsideration provision in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted references to Board officer. March 3, 2003 – Amended to clarify that a preliminary determination is made to provide temporary financial relief until the Board receives information. Addition of requirement that an application for compensation must have been received. Amendments substitute the term "preliminary determination" for "interim decision" Addition of statements discussing the application of then section 96(5) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492. Policy applied to all preliminary determinations made on or after March 3, 2003.
APPLICATION:	Applies on or after October 29, 2020.

#96.22 Suspension of Claim

If a report is submitted to the Board simply for the record, and if the worker did not receive medical treatment or was not disabled from work, or no other costs were incurred, no adjudication is necessary and the file will simply be marked “nothing to consider”.

If information necessary to the adjudication of a claim can only be provided by the worker, and the worker ignores a request for that information, refuses to provide it or hampers the investigation, the claim may be suspended (see policy item #93.26 regarding a worker’s obligation to provide information).

If a claim file is opened, and it is later established that the claim will be fully administered and paid by another Board under the terms of the Interjurisdictional Agreement, the British Columbia file will be placed in suspense. (See policy items #112.30 and #113.30.)

Wage-loss benefits may also be suspended in the following situations:

(1) if the worker leaves British Columbia without notifying the Board or receiving prior consent from the Board (see Item C10-72.00);

(2) if the worker is being paid full salary by the Federal Government (see Section 3 of the policy in Item C5-34.10);

(3) if the worker refuses to accept the cheques;

(4) if a worker moves and the worker’s whereabouts are unknown.

If a claim has been suspended, all parties are notified of this fact and of the reasons for it. This includes any party from whom an account has been received. When the information required has been received or any other ground which gave rise to the suspension has been removed, the suspension will be lifted. In that event, the parties involved will again be notified.

CROSS REFERENCES:
Item C5-34.10, *Payment of Wage-Loss Benefits* (Section 3 Reimbursing Employers for Amounts Deducted from Compensation);
Item C10-72.00, *Health Care – Introduction*;
Policy item #93.26, *Obligation to Provide Information*;
Policy item #112.30, *Worker Also Entitled to Compensation Outside of British Columbia*;
Policy item #113.30, *Interjurisdictional Agreements*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY:
January 1, 2024 – Housekeeping change to update internal cross reference.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#96.30 Permanent Disability Benefits Decision-Making Procedures

The Board determines whether an actual or potential permanent disability is accepted on a claim.

If the Board has accepted an actual or potential permanent disability, the Board then determines the extent of the disability and the worker's permanent disability benefit entitlement. This requires a determination under section 194, or sections 195 and 196 of the *Act.*

The Board may proceed to assess permanent disability benefits without a section 195(1) evaluation if there is sufficient medical evidence already available. Except for those cases, the normal practice is for a section 195(1) evaluation to be conducted for permanent disability benefits purposes by the Board or a Board-authorized External Service Provider (see Item C6-39.00).

Although the evaluation is not the only medical evidence that the Board may use, it will usually be the primary input.

The decision-making procedure for assessing entitlement to permanent disability benefits for psychological impairment under section 195(1) of the *Act* is discussed in Item C6-39.00.

In those cases where the worker has a section 195(1) assessment, the Board is required to notify the worker indicating the results of the assessment, which may include the results of a section 195(1) evaluation, and the conclusions reached regarding entitlement to permanent partial disability benefits.

When the Board adjudicates requests for the commutation of permanent disability benefits, it may obtain input from Vocational Rehabilitation Services before making a decision.

EFFECTIVE DATE:	January 1, 2021
AUTHORITY:	Sections 194, 195,196, and 339 of the *Act*.
CROSS REFERENCES:	Item C6-39.00, *Section 195 Permanent Partial Disability Benefits*; Item C11-89.00, *Vocational Rehabilitation – Employability Assessments – Temporary Partial Disability and Permanent Partial Disability*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the *Workers Compensation Amendment Act, 2020* (Bill 23). April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. June 1, 2009 − Inserted reference that a Board officer determines whether an actual or potential disability is accepted on the claim. Deleted references to Board officer in Disability Awards, Medical Services and Consultant. October 1, 2007 – Revised to delete references to memos and memorandums.

July 2, 2004 – Revisions to the role of Board officers applied to all decisions, including appellate decisions, made on or after July 2, 2004.

APPLICATION: Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

#97.00 EVIDENCE

The term "onus" or "burden of proof" refers to who has the obligation to prove an issue in question. The workers compensation system in British Columbia operates on an inquiry basis, rather than an adversarial basis, so there is no onus or burden of proof on the worker or employer. The Board gathers the relevant evidence and determines whether it is sufficiently complete and reliable to arrive at a sound conclusion with confidence. If not, the Board considers what other evidence might be obtained, and must take the initiative in seeking further evidence.

The term "standard of proof" refers to the level of certainty required to prove an issue in question. For decisions respecting the compensation or rehabilitation of a worker, the standard of proof under section 339(3) of the *Act* is "at least as likely as not." If, on weighing the available evidence, the disputed possibilities are evenly balanced then section 339(3) requires that the issue be resolved in a manner that favours the worker. For other decisions, the standard of proof is the balance of probabilities. Balance of probabilities means "more likely than not."

It is important to distinguish between the standard of proof and the test for the issue in question, such as causation. For example, for a worker to be entitled to compensation for an injury, the worker's employment has to be of causative significance in the occurrence of the injury, which means more than a trivial or insignificant aspect of the injury. The standard of proof applies to this determination, so the question for the Board is whether it is "at least as likely as not" that the worker's employment was more than a trivial or insignificant aspect of the injury.

Although there is no burden of proof on the worker, the *Act* contains prerequisites for benefits. Compensation will not be paid simply because, for example, a telephone call is received from someone claiming to be a worker, who has been hurt, and was disabled for a certain number of days. Some basic evidence must be submitted by the worker to show that there is a proper claim. The extent of that basic evidence necessary, and the weight to be attached to it, is entirely in the hands of the Board.

It is therefore not uncommon to see that a claim will be denied when a worker, away from employment, begins to feel some pain and discomfort in the lower back, and seeking to find a reason for this condition, thinks back to the work being done over a period of time and concludes that the problem must have resulted from something which occurred on a certain day when certain heavy work was being performed. The question then arises whether there was anything other than the worker's hindsight which would allow the Board to conclude that the work done some weeks or months previously had causative significance. It is at this point that investigation takes place and the evidence is weighed. If the evidence does not support a finding it is "at least as

likely as not" that any activity at work was of causative significance in the reported condition, at or near the time alleged by the worker, it can fairly be said that causation has not been established. The worker has simply failed to present those fundamental facts which bring the provisions of the *Act* into play.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Sections 134 and 339 of the *Act*.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. February 1, 2020 – Policy amended to provide guidance on the legal issues of standard of proof, evidence, and causation. June 1, 2009 – Deleted references to officer and Adjudicator.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#97.10 Evidence Evenly Weighted

For decisions respecting the compensation or rehabilitation of a worker, the standard of proof under section 339(3) of the *Act* is "at least as likely as not."

Complaints are sometimes received at the Board that a worker has not been given the benefit of the doubt. Usually, these complaints relate to a situation in which the worker has a disability, but the issue is whether it is one arising out of or in the course of the worker's employment. The essence of the complaint is often that if there is some possibility that the injury arose out of the worker's employment, the worker should be given the benefit of the doubt. For the Board to take that view, however, would be inconsistent with the terms of the *Act*. Where it appears from the evidence that two conclusions are possible, but that one is more likely than the other, the Board must decide the matter in accordance with that possibility that is more likely.

Under the terms of section 339(3), the Board is required to decide an issue in a manner that favours the worker if it appears that "the evidence supporting different findings on an issue is evenly weighted in that case". This applies only if there is evidence of roughly equal weight for and against the claim. It does not come into play if the evidence indicates that one possibility is more likely than the other.

The Board, as a quasi-judicial body, must make its decisions according to the evidence or lack of evidence received, not in accordance with speculations unsupported by evidence. Section 339(3) of the *Act* applies when "the evidence supporting different findings on an issue is evenly weighted in that case". However, if the evidence before the Board does not support a finding that a particular condition can result from a worker's employment, there is no doubt on the issue; the Board's only possible decision is to deny the claim. If one speculates as to the cause of a condition of unknown origin, one might attribute it to the person's work or to any other cause, and one speculated cause is no doubt just as tenable as any other. However, the Board can only be concerned with possibilities for which there is evidential support and only when the evidence is evenly weighted does section 339(3) apply.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Section 339 of the *Act*.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. February 1, 2020 – Policy amended to provide guidance on the legal issues of standard of proof, evidence, and causation. March 3, 2003 – Updated to reflect the new wording of then section 99 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.
APPLICATION:	Applies to all decisions made on or after February 1, 2020.

#97.20 Presumptions

There are statutory presumptions in favour of workers or dependants already discussed in earlier chapters. These are as follows:

(1) Section 134(3) provides that in cases where the injury is caused by accident, if the accident arose out of the worker's employment, unless the contrary is shown, it must be presumed that the injury occurred in the course of the worker's employment; and if the accident occurred in the course of the employment, unless the contrary is shown, it must be presumed that the injury arose out of that employment.
(See Item C3-14.20.)

(2) Section 135(2) provides that if a worker who is or has been employed in an eligible occupation:

- is exposed to one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, and

- has a mental disorder that, at the time of the diagnosis under subsection 135(1)(b), is recognized in the manual referred to in subsection 135(1)(b) as a mental or physical condition that may arise from exposure to a traumatic event,

the mental disorder must be presumed to be a reaction to the one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, unless the contrary is proved.
(See Section B. of Item C4-25.20.)

(3) Section 137 provides that if, on or immediately before the date of the disablement, the worker was employed in a process or industry described in column 2 of Schedule 1 opposite the occupational disease that has resulted in the disablement, the occupational disease must be presumed to have been due to the nature of the worker's employment unless the contrary is proved. (See Section A. of Item C4-25.20.)

(4) Subject to the exposure and date of first disability requirements of section 139(4), section 139(2) provides that if a worker is disabled as a

result of a heart disease, and was employed as a firefighter on or immediately before the date of disablement from the heart disease, the heart disease must be presumed to be due to the nature of the worker's employment as a firefighter, unless the contrary is proved. (See Section B. of Item C4-25.20.)

(5) Subject to the exposure and first date of disability requirements of section 139(4), section 139(3) provides that if a worker is disabled as a result of a heart injury, and was employed as a firefighter on or immediately before the date of disablement from the heart injury, the heart injury must be presumed to have arisen out of and in the course of the worker's employment as a firefighter, unless the contrary is proved. (See Section B. of Item C4-25.20.)

(6) Subject to subsections (2) and (3), section 140(1) applies to a worker who is or has been a firefighter who contracts a primary site lung cancer or a disease prescribed by the *Firefighters' Occupational Disease Regulation*. It provides that the disease must be presumed to be due to the nature of the worker's employment as a firefighter unless the contrary is proved. (See Section B. of Item C4-25.20 and BC Reg 125/2009.)

(7) Section 143 applies to a deceased worker who, on the date of the worker's death, was under 70 years of age and had an occupational disease of a type that impairs the capacity of function of the lungs. It provides that if the death was caused by an ailment or impairment of the lungs or heart of non-traumatic origin, it must be conclusively presumed that the death resulted from the occupational disease. (See Item C4-29.20.)

(8) Section 144 applies if:

- a worker is an applicant, as defined in the *Emergency Intervention Disclosure Act*, who has obtained a testing order under that Act respecting a source individual, as defined in that Act,
- the worker has contracted a communicable disease prescribed for the purposes of the *Emergency Intervention Disclosure Act*,
- the worker came into contact with the bodily substance of the source individual in the course of the worker's employment, and
- test results obtained under the testing order indicated that the source individual is infected with a pathogen that causes a communicable disease contracted by the worker.

It provides that it must be presumed, unless there is evidence to the contrary, that the communicable disease of the worker is due to the nature of the worker's employment. (See Section B. of Item C4-25.20.)

The *Act* contains no general presumption either in favour of the worker or against the claim.

EFFECTIVE DATE:	July 23, 2018
AUTHORITY:	Section 339 of the *Act*.
CROSS REFERENCES:	Item C4-25.20, *Establishing Work Causation* (Section B. Additional Presumptions in the Workers Compensation 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. July 23, 2018 – Policy consequentially amended in accordance with changes to then section 5.1 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, resulting from the *Workers Compensation Amendment Act, 2018*, Bill 9 of 2018. May 1, 2017 – Added to policy a reference to the firefighters' presumption and communicable disease presumption provided in the *Act.*
APPLICATION:	Applies on or after July 23, 2018.

#97.30 Medical Evidence

It is the responsibility of the Board to make all the decisions relating to the validity of a claim and to make all the decisions relating to compensation payments. This includes decisions relating to medical as well as other aspects of the claim.

This does not mean, of course, that a lay judgment is preferred to a medical opinion on a question of medical expertise. What it means is that the Board is responsible for the decision-making process, and for reaching the conclusions on the claim. But this will, of course, require an input of medical evidence, or sometimes other expert advice, on any issue requiring professional expertise.

In reaching conclusions on a medical question, the guide-rules are set out below.

EFFECTIVE DATE:	June 1, 2009
AUTHORITY:	Section 339 of the *Act*.
HISTORY:	June 1, 2009 – Deleted references to Claims Adjudicator, Claims Officer, the Disability Awards Officer and the Adjudicator in Disability Awards.
APPLICATION:	Applies on or after June 1, 2009.

#97.31 Matter Requiring Medical Expertise

If the matter is one requiring medical expertise, the decision must be preceded by a consideration of medical evidence (this term includes medical opinion or advice). Medical evidence might consist of a statement in the Form 8 Physician's First Report, or some information or opinion from the attending physician, or it might consist of advice provided from a Board Medical Advisor or another doctor. It is for the Board to decide

when medical evidence is needed, what kind of medical evidence is needed, and on what questions.

EFFECTIVE DATE:	June 1, 2009
AUTHORITY:	Section 339 of the *Act*.
CROSS REFERENCES:	Policy item #95.10, *Form of Reports*, 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 references to Claims Adjudicator and Claims Officer.
APPLICATION:	Applies on or after June 1, 2009.

#97.32 Statement of Worker about Own Condition

A statement of a worker about the worker's own condition is evidence insofar as it relates to matters that would be within the worker's knowledge, and it should not be rejected simply by reference to an assumption that it must be biased. Also, there is no requirement that the statement of a worker about the worker's own condition must be corroborated. The absence of corroboration is, however, a ground for considering whether the worker should be interviewed by the Board, or telephone enquiries made, or whether anything relevant could be discovered by having the worker medically examined. A conclusion against the statement of the worker about the worker's own condition may be reached if the conclusion rests on a substantial foundation, such as clinical findings, other medical or non-medical evidence, or serious weakness demonstrated by questioning the worker, or if the statement of the worker relates to a matter that could not possibly be within the worker's knowledge.

EFFECTIVE DATE:	June 1, 2009
AUTHORITY:	Section 339 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 Claims Adjudicator, Claims Officer and Board Medical Advisor.
APPLICATION:	Applies on or after June 1, 2009.

#97.33 Statement by Lay Witness on Medical Question

A statement by a lay witness on a medical question may be considered as evidence if it relates to matters recognizable by a layperson; but not if it relates to matters that can only be determined by expertise in medical science. For example, a statement by a fellow worker that he or she saw the worker suffering from silicosis would be worthless; but a statement by a fellow worker reporting to have seen the worker bleeding from the forehead would be evidence of a head wound. Statements made by a first aid attendant or other categories of paramedical personnel can be considered insofar as they relate to matters within the normal experience or training of that category of paramedical personnel. But they must obviously be treated very cautiously if they go beyond that into areas requiring greater medical expertise, or if they conflict with the opinion of a doctor.

AUTHORITY: Section 339 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#97.34 Conflict of Medical Opinion

If there are differences of opinion among doctors, or other conflicts of medical evidence, the Board must select from among them. The Board must not do it by automatically preferring the opinions of one category of doctors to another category, nor should it be done by counting heads, so many opinions one way and so many another. The Board must analyze the opinions and conflicts as best as possible on each issue and arrive at its own conclusions about where the weight of the evidence lies. If it is concluded that there is doubt on any issue, and that the evidence supporting different findings on an issue is evenly weighted in that case, the Board must follow the mandate of section 339 and resolve that issue in a manner that favours the worker. (See policy item #97.10.)

It should never be assumed that there is a conflict of medical opinion simply because the opinions of different doctors indicate different conclusions. A difference in conclusion between doctors may or may not result from a difference in medical opinion. For example, the difference could result from different assumptions of non-medical fact. Where there are two or more medical reports or memos on file from physicians, indicating different conclusions, the Board will not simply select among them as a first step. The Board should first think about why they are different and consider whether the relevant non-medical facts have been clearly established. The Board may seek advice to determine whether the best medical evidence has been obtained and, for example, find out if any appropriate medical procedures can be instituted that would assist in arriving at a more definite conclusion.

If two or more medical reports or memos indicate a probable difference of medical opinion and the issue is serious, the matter will normally be discussed with the physicians involved.

The Board has no rule that states that the evidence of a physician is always to be preferred to that of a chiropractor or other qualified practitioner. Reports from both types of practitioner are acceptable evidence and are weighed on their merits. This principle applies even if the referral to the practitioner is contrary to Board policy. Should there, for example, be concurrent treatment by a physician and a chiropractor, the Board might not pay for the chiropractor, but any chiropractor reports received must be weighed as evidence. They are not ignored just because the referral was unauthorized. (See Item C10-73.00.)

EFFECTIVE DATE: February 1, 2020
AUTHORITY: Section 339 of the *Act*.
CROSS REFERENCES: Item C10-73.00, *Direction, Supervision, and Control of Health Care*; Policy item #97.10, *Evidence Evenly Weighted*, 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.

February 1, 2020 – Policy amended to provide guidance on the legal issues of standard of proof and evidence.
June 1, 2009 – Deleted references to officers.
March 3, 2003 – Inserted new wording of then section 99 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492.

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

#97.35 Termination of Benefits

If a treating physician expresses an opinion that a worker is disabled from work by reason of a compensable disability, the Board may rely upon overall existing medical evidence from a doctor who has examined the worker or other substantive evidence on the file to reach a conclusion contrary to that opinion, or may decide to carry out further investigation which may involve a Board medical examination.

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Section 339 of the *Act*.
HISTORY: June 1, 2009 – Deleted references to Claims Adjudicator, Claims Officer and Board physician.
APPLICATION: Applies on or after June 1, 2009.

#97.40 Permanent Disability Benefits

The Board may proceed to assess permanent disability benefits without a section 195(1) evaluation, if there is sufficient medical evidence already available. Except for those cases, the normal practice is for a section 195(1) evaluation to be conducted for permanent disability purposes by the Board or an External Service Provider.

It is the responsibility of the Board to classify the disability as a percentage of total disability. In doing this, it is proper for the Board to consider other factual and medical evidence as well as the section 195(1) evaluation report prepared by the Board or the External Service Provider. However, although the report of the Board or the External Service Provider is not the only medical input that the Board may use, it will usually be the primary input, and caution will be used in referring to any other medical opinion.

The section 195(1) evaluation report takes the form of expert evidence which, in the absence of other expert evidence to the contrary, should not be disregarded. It is always open to the Board to conclude that the worker's functional impairment is greater or less than the section 195(1) evaluation report indicates.

The decision-making procedure for assessing entitlement to permanent disability benefits for psychological impairment under section 195(1) of the *Act* is discussed in Item C6-39.00.

In making a determination under section 195(1), the Board will enquire carefully into all of the circumstances of a worker's condition resulting from a compensable injury.

EFFECTIVE DATE: January 1, 2021
AUTHORITY: Sections 195 and 339 of the *Act*.
HISTORY: January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the *Workers Compensation Amendment Act, 2020* (Bill 23).
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 officers in Disability Awards and officer.
January 1, 2003 – References to prior Subjective Complaints policy removed. Applied to new claims received and all active claims that were then awaiting an initial adjudication.
APPLICATION: Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

#97.50 Rumours and Hearsay

Hearsay must only be used very cautiously as evidence, and rumour must not be used as evidence at all. But even rumour is often valuable as a lead to investigation.

AUTHORITY: Section 339 of the *Act*.

#97.60 Lies

A lie may be ground for drawing an adverse inference with regard to the facts to which it relates. But it is not in itself ground for denying compensation, particularly when it relates to something not relevant to the claim at all.

AUTHORITY: Section 339 of the *Act*.

#97.70 Surveillance

Section 122 of the *Act* provides the Board with authority to investigate claims for compensation. Under section 346 of the *Act*, the Board has authority to make necessary inquiries and to appoint others to make such inquiries.

The Board is required to gather the evidence necessary to adjudicate claims, and surveillance is one method to obtain such evidence. Surveillance is the discreet observation of a worker, and includes video-recording, audio-recording, and photographing the worker.

The Board conducts surveillance and uses surveillance evidence in compliance with applicable legislation, including the *Freedom of Information and Protection of Privacy Act* and the *Canadian Charter of Rights and Freedoms*.

Surveillance is a tool of last resort to be used when determining if a worker has engaged in fraud or misrepresentation where there is other existing evidence of fraud or misrepresentation and a strong likelihood the surveillance evidence will assist in establishing the fraud or misrepresentation.

Director or Vice-President approval is required to approve surveillance requests.

Surveillance evidence is assessed by the Board for accuracy and relevancy to the issues being decided, and is considered in conjunction with all other evidence.

The worker is given a reasonable opportunity to view and respond to surveillance evidence before the Board finalizes any decision based on that evidence.

EFFECTIVE DATE:	March 1, 2019
AUTHORITY:	Sections 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

may have inspection jurisdiction for accident prevention purposes. Where an inspection is of a technical nature and can only be carried out by someone technically qualified, perhaps an Occupational Hygiene Officer, such technical personnel may be used to make an inspection for the purposes of claims adjudication.

Where appropriate, the worker should be offered the opportunity to accompany the Board officer on the workplace visit.

EFFECTIVE DATE:	June 1, 2009
AUTHORITY:	Section 346 of the *Act*.
HISTORY:	June 1, 2009 – Deleted references to Adjudicators and Claims Adjudicators.
APPLICATION:	Applies on or after June 1, 2009.

#98.22 Failure of Worker to Appear

If the worker fails or refuses to appear at an inquiry, the worker's claim may be suspended, or decided in the worker's absence, or a further appointment may be arranged.

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.

#98.23 Representation

A worker has a right to bring a representative to any enquiry, both at first instance and on appeal.

If the worker is unable to communicate effectively in English, an interpreter is arranged.

AUTHORITY:	Section 122 of the *Act*.

#98.24 Presence of Employer

If a worker is unrepresented, and the employer or employer's representative appears, it must be determined whether the employer is appearing on behalf of the worker. If the employer is appearing on behalf of the worker, the worker will be asked (but not in the presence of the employer) whether the worker has any objection to the employer being present. If there is no objection, the employer can be invited to attend the interview. If the worker does object, the employer will be asked to wait outside, and can be interviewed separately.

If appearing against the worker, the employer is not allowed to be present at the interview with the worker and must be interviewed separately. If there is any doubt as to the employer's intentions, the employer will be interviewed separately.

If a worker is represented, an employer may be permitted to be present even if the employer is appearing against the worker.

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.

#98.25 Oaths

The oath is not administered as a normal routine in every inquiry, but is used when considered appropriate.

If:

1. a person called to give evidence objects to taking an oath, or is objected to as incompetent to take an oath, and the Board is satisfied of the sincerity of the objection of the witness from conscientious motives to be sworn or that the taking of an oath would have no binding effect on the witness' conscience;

2. or the Board is satisfied that the form or manner of oath which a person called to give evidence declares to have a binding effect on the person's conscience is not such that it can be taken in the place where the inquiry is being held, or that it is not fitting so to do, and the Board so directs,

Section 20(3) of the *Evidence Act* directs that the person must, instead of taking an oath, make an affirmation. An employer or representative or a worker's representative need not be placed under oath unless they have something specific or pertinent to contribute to the inquiry.

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.

#98.26 Witnesses and Other Evidence

A worker may bring to an inquiry such witnesses, and may submit such verbal and documentary evidence, as the worker thinks will be of assistance.

Wherever possible, witnesses will be interviewed separately without the worker being present. They will not be present while the worker is being interviewed.

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.

#98.27 Cross-examination

Under the inquiry system (contrary to the adversary system), there is no right of cross-examination of the parties or witnesses. If, in the process of an inquiry, one of the parties wishes to ask a question of the person whose evidence is being taken, the

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(6) of a party to a proceeding to access information, or the variety of exceptions listed in sections 33 and 33.1 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(6) 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:	May 1, 2024 − Housekeeping changes consequential to implementing the *Freedom of Information and Protection of Privacy Amendment Act, 2021* (Bill 22), in effect November 25, 2021. 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 representatives of any decisions which have been made and communicated to the worker or employer.

If an employer has protested a claim which, upon investigation, appears to be valid, the Board should, before making the decision, phone the employer to ensure that the employer is aware of the issues relevant to the protest and has an opportunity to comment.

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 Adjudicator. January 1, 2005 – Housekeeping amendment to require written authorization for disclosure.
APPLICATION:	Applies on or after June 1, 2009.

#99.20 Notification of Decisions

1. Definitions

A "decision" is a determination of the Board to give, deny, reconsider or limit entitlement to benefits and services, or impose or relieve an obligation, pertaining to compensation or rehabilitation matters under the compensation provisions of the *Act* or policy.

An "affected person" is a worker, dependant of a deceased worker, or an employer; or a person who claims to be an affected person, who is directly affected by a decision and may request a review or appeal of that decision.

2. Communicating Decisions

A decision is made, for the purpose of triggering the timelines for reconsiderations and reviews, on the date the decision is communicated to the affected person.

If the decision is communicated to affected persons on different dates, the statutory timelines commence on the date the decision is first communicated to an affected person.

The Board also communicates decisions to an affected person's advocate or representative if valid authorization is in place.

In occupational disease claims, where there are a number of different employers identified, but none of the employers is responsible for 20% of the exposure or more, decision letters and review and/or appeal information are sent to the employers' association that best represents the appropriate sector and rate group of that industry.

A. Written Communication

The Board will communicate the following decisions through a decision letter:

- Decisions on whether a claim is accepted, denied or rejected;
- Decisions on initial entitlement to wage-loss benefits, permanent disability benefits, dependant benefits, payments to a worker where the employer failed to comply with the obligations under the duty to maintain employment, and vocational rehabilitation assistance;
- Decisions on initial and long-term average earnings;
- Decisions that deny or limit benefits to a worker;
- Decisions regarding the re-opening of a matter previously decided;
- Decisions resulting from the reconsideration process;
- Decisions regarding the acceptance of a compensable consequence;
- Decisions that have been protested by the employer;
- Decisions on whether an employer may be granted a relief of costs; and
- Decisions to impose an administrative penalty on the employer for failure to comply with the duty to cooperate or duty to maintain employment.

The communication of the above decisions in writing triggers the timelines for reconsideration and review. The fact that a decision was not communicated in writing does not void the decision.

If one of the above decisions is not communicated in writing, the Board will determine whether the decision was satisfactorily communicated through other means, for example, verbally, through the payment or termination of compensation, or the referral of a worker for medical treatment or examination, in order to determine the timelines for reconsideration and review.

A decision letter will include an explanation of the relevant rights of review and/or appeal, and should, where appropriate, include the following elements:

1. The matter being adjudicated;
2. The evidence that was considered;
3. An explanation of the weight apportioned to the evidence and the reasons for the weighting;

4. Review of on-going communication with the worker where the relevant issues were discussed and details of the worker's response;

5. Reference to any relevant sections of the *Act* or Board policy;

6. The formal decision; and

7. An explanation of the impact of the decision on payment of compensation or entitlement to other benefits or services.

Decision letters are provided to persons directly affected by the decision.

Before a review or appeal is initiated, the type of information from a worker's claim that can be disclosed to the employer and/or authorized advocates and representatives is limited. Disclosure of personal and medical information is limited to information that is relevant to the claim and the issues involved, and that the employer has a need to know. The same approach applies for notification of decisions to health care providers, such as physicians and pharmacists.

If a decision is provided in writing and mailed to an affected person, the decision is deemed to have been communicated on the 8th day after it was mailed. Therefore, the reconsideration timeline starts at the end of the 8-day mailing period.

B. Verbal and Other Communication

The Board may also communicate decisions such as health care decisions or administrative actions, verbally. Examples of the types of decisions the Board may communicate verbally include:

- a decision to approve an additional two weeks of physiotherapy benefits beyond the initial entitlement period; or

- a referral to a specialist.

When a decision is communicated verbally, an explanation of the rights of review and/or appeal will be verbally provided to the affected person. The verbal communication also should, where appropriate, include an explanation of the decision in accordance with the elements of a decision letter.

Documentation on the claim is sufficient evidence that verbal communication of the decision, including the reasons for the decision and notice of review and appeal rights, has occurred.

A copy of the written record of the decision is provided upon request following the verbal communication of a decision; however, it does not constitute a new decision. The statutory timelines for reconsiderations and reviews commence from the date of the verbal communication.

The Board may communicate decisions through the ongoing payment of temporary or permanent disability benefits, the payment of health care invoices, or the final payment of temporary disability or health care benefits, where the decision is uncontested and/or is in favour of the worker.

For example, if a claim is allowed for ongoing wage-loss benefits and there has been no protest from the employer, the Board does not provide a letter outlining the reasons for the continued payment of benefits.

3. Finding of Facts

A finding of fact is not a decision. It is the factual basis on which a decision is made.

Findings of fact may change based on new information and are not subject to the limits on the Board's reconsideration authority.

A finding of fact may not be reviewed or appealed in the absence of an expressed or implied decision under review or appeal.

4. Rejected Claims

The term "reject" is different than a "disallow" and refers to a claim where:

1. a self-employed worker has no personal optional protection;

2. the worker was employed by an employer not covered under the *Act*;

3. a report was submitted in error. Normally, this occurs when a physician, on the basis of a misunderstanding, submits a report in error.

If a claim is rejected, notification of the review and/or appeal procedures is provided to the person making the claim.

EFFECTIVE DATE:	January 1, 2024
AUTHORITY:	Sections 123 and 319 of the *Act*.
HISTORY:	January 1, 2024 − Policy changes made consequential to implementing Division 3.1 of the *Workers Compensation Amendment Act (No. 2), 2022* (Bill 41). October 29, 2020 − Amended to reflect amendments to reconsideration provision in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020. April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. April 1, 2010 − Amended to provide a definition of decisions; clarify when a decision is made and how it is communicated; define a finding of fact; and confirm that rights of review and appeal are communicated on rejected claims. June 1, 2009 – Deleted reference to "send a cheque" and replaced with "may make a payment".

January 1, 2005 – Housekeeping amendment to require written authorization for disclosure, and to clarify appropriate disclosure principles.
March 3, 2003 – Inserted references to evenly weighted evidence and the rights of review and/or appeal.

APPLICATION: Applies to all decisions made on or after January 1, 2024.

#99.22 Procedure for Handling Complaints or Inquiries About a Decision

The Board frequently receives letters, telephone calls and visits from workers, employers and their representatives concerning the decisions the Board makes on claims. Generally, the party in question will be either asking for further explanation of the decision or expressing dissatisfaction with the substance of the decision.

If the worker or employer is requesting further explanation, this should be given. In the case of advocates and representatives, disclosure of information will only be provided if proper written authorization is in place. If, however, dissatisfaction is expressed with the substance of the decision, the policy outlined in Item C14-103.01 is followed. This policy is intended only to cover situations where the worker, employer or representative is dissatisfied with the substance of a decision on a claim. It is not intended to cover complaints concerning the general administration of the claim, for example, delays in processing.

At no time is a letter expressing dissatisfaction with the substance of a decision to be simply committed to the claim with no further action taken.

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 officers and manager in the Compensation Services Division.
January 1, 2005 – Housekeeping amendment to require written authorization for disclosure of information.
March 3, 2003 – Inserted reference to Item C14-103.01 and deleted references to Review Board.

APPLICATION: Applies on or after June 1, 2009.

#99.23 Unsolicited Information

Unsolicited information will not be placed on the worker's claim until it has been assessed for relevancy and accuracy.

If the Board receives unsolicited information about a worker, the following principles apply:

1. Unsolicited information that is clearly irrelevant to the administration of the worker's claim will be destroyed.

2. Unsolicited information that appears to be relevant or potentially relevant to the administration of the worker's claim will be investigated for accuracy.

3. If, after investigation, the information is determined to be inaccurate or its accuracy is unknown, the information will be destroyed, including any record that initiated the investigation, the investigation report, and any documentation obtained in connection with the investigation.

4. If, after investigation, the information is determined to be accurate, a final assessment as to relevancy will be made.

5. If accurate information is considered to be irrelevant to the administration of the worker's claim, the information will be destroyed, including any record that initiated the investigation, the investigation report and any documentation obtained in connection with the investigation.

6. If accurate information is considered to be relevant or potentially relevant to the administration of the worker's claim, the information is placed on the worker's claim as follows:

   (a) anonymous information — The investigation report and any documentation obtained in connection with the investigation will be placed on the claim. The record that initiated the investigation will be destroyed and the claim will state that the investigation was initiated on the basis of information received.

   (b) information from identified source — The record that initiated the investigation, the investigation report and any documentation obtained in connection with the investigation will be placed on the claim.

   An identified source will be advised that the information may be disclosed to the worker. If the identified source wishes to become anonymous at any time, the information will be treated as anonymous information under (a) above. If the identified source wishes to remain identified, this will be recorded on the worker's claim.

7. If only some of the information is accurate and only some of the accurate information is relevant or potentially relevant to the administration of the worker's claim, the record that initiated the investigation will be destroyed and reference will only be made on the worker's claim to information that is both accurate and relevant or potentially relevant.

8. If, during the investigation, accurate information is discovered that is unrelated to the subject matter of the unsolicited information, but is relevant to the administration of the worker's claim, that information will be recorded separately on the worker's claim.

9. If unsolicited information is found to be accurate and relevant or potentially relevant to the administration of the worker's claim, the worker will be advised of the information and given an opportunity to comment. Complaints about the accuracy and relevancy of unsolicited information will be dealt with according to policy item #99.35.

CROSS REFERENCES: Policy item #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.

#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.

#99.32 Provision of Copies of File Documents

A copy of all the documents on the claim file will be sent out automatically on receipt of a request for disclosure from a worker or an authorized representative.

Where an employer has a right to receive disclosure of a claim file, that disclosure will consist of the same disclosure which would be granted to the worker.

Only one copy of each claim file is provided. The person entitled to disclosure must decide whether the copy is to go to them or to an authorized or a designated advocate or representative or, if there is more than one, which of them should receive the copy.

File copies may be mailed out or picked up at a Board office.

No fees are charged to workers for the copy of their claim files. Fees are also not charged to employers for a copy of claim files where they are entitled to disclosure.

EFFECTIVE DATE: May 1, 1993
AUTHORITY: Sections 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.
May 1, 1993 – Disclosure fees terminated for the provision of copies of assessment files, claims files, and occupational safety and health files to authorized persons for the purposes of appeals and certain other proceedings (see Governors' Decision No. 37 (1993) 9:3 *W.C.R.* 337.)

#99.33 Personal Inspection of Files

If the recipient of the copies wishes, an appointment may be made to inspect the file in person.

Personal inspection of the file may take place at the Board's Richmond office or at any other Board office outside the Richmond area by prior appointment only. The office used in each case will be the one closest to the requestor's residence, unless another office is specifically named.

Any person attending at a Board office to view a file in person or to pick up copies will normally be required to provide personal identification containing the person's photograph (e.g. driver's licence) and a social insurance card.

Explanations about what is in the file must be sought from the person or body dealing with the matter, a Workers' Adviser, an Employers' Adviser, or the person's own representative.

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

#99.34 Disclosure

As soon as practicable, after a request for a review has been filed, the Board must provide the parties to the review with a copy of its records respecting the matter under review.

As soon as practicable after the Board has been notified by the Workers' Compensation Appeal Tribunal that an appeal has been filed, the Board must provide the parties to the appeal with a copy of its records respecting the matter under appeal.

If it is not a review or appeal situation, a worker may obtain disclosure from the Board. Where disclosure is available pursuant to the disclosure policies and it is desired simply to inspect the original file in person at an office of the Board, without receiving a copy of the file or after the receipt of a copy, the request may be made directly to the Board office concerned.

Requests for disclosure involving information relating to sexual assault claims where the employer is alleged to be the perpetrator of the assault will be referred to the Sensitive Claims Area (see policy item #99.30).

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Sections 271 and 295 of the *Act*.
HISTORY: June 1, 2009 – Deleted references to Client Service Managers of the appropriate Service Delivery Location and outside the Richmond area.
March 3, 2003 – Added provision for disclosure after request for review and after appeal filed to WCAT. Deleted reference to address where requests for disclosure must be submitted by employers and workers. Applied to all decisions made on or after March 3, 2003.
APPLICATION: Applies on or after June 1, 2009.

#99.35 Complaints Regarding File Contents

Only where it is personal information which is irrelevant to the claim, does the Board permit the deletion or removal from claim files of statements or documents to which a worker, employer or other person referred to on the file objects. A person making an objection as to the accuracy of file information will be allowed to place on the file statements or material to rebut the statements to which there is an objection. However, the Board will not make a ruling on a dispute over the accuracy of file information save when it is necessary in the normal course of events for the purpose of reaching a decision on the merits of the claim or other matter. Where the person making the objection is the worker, anyone who had access to the file in the one-year period prior to the annotation to the record will be informed.

A complaint that a comment on a Board file is pejorative may be forwarded to the President. If it is concluded that the comment is pejorative, the comment will be

stamped, or annotated electronically where appropriate, to identify the comment as pejorative and to refer the reader to the correcting documentation.

#99.40 Tape Recordings of Interviews

Where an enquiry interview has been conducted by the Board, a copy of the tape recording of the interview will be supplied upon request to the worker or the worker's authorized or designated representative. If a review has been requested or an appeal has been filed, a copy may also be provided to the employer or the employer's authorized representative.

A person being interviewed, or any other person entitled to be present at an enquiry, may, if desired, record the proceedings.

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 reference to officer.
March 3, 2003 – Inserted reference to review.
APPLICATION: Applies on or after June 1, 2009.

#99.50 Disclosure to Public or Private Agencies

Where a public or private agency requests disclosure of all or part of a claim file, the Board will only comply with the request in keeping with the provisions of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The following are the more common examples where disclosure will be provided in response to such a request:

(a) Where an appropriate signed consent has been received from the worker.

(b) To any agency having statutory authority allowing access to personal information.

(c) To comply with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of the information.

(d) To a member of the Legislative Assembly who has been requested by the worker to assist in resolving a problem.

(e) If the Board determines that compelling circumstances exist which affect the health or safety of an individual.

AUTHORITY: Section 235 and 349 of the *Act.*

#99.51 Legal Matters

If a staff member is directly served with a subpoena, the Board's General Counsel or delegate must be advised immediately. If a request is received from a lawyer for

information from a claim file, the request is forwarded to the Records Management Edit Clerk.

At the request of the Board's General Counsel, a Director or designate will be asked to respond to a subpoena or other request for information from a lawyer.

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Section 332 of the *Act*.
HISTORY: June 1, 2009 – Deleted references to Compensation Services Division, Adjudicator and Board officer.
APPLICATION: Applies on or after June 1, 2009.

#99.52 Other Workers Compensation Boards

The Board has authorized the exchange of copy documents with other Boards. The Board will also inform other Boards of the amount of any permanent disability benefits being paid to a worker by this Board.

AUTHORITY: Section 349 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#99.53 Government of Canada

In referring workers to a department of the Government of Canada for assistance in job placement, the Board may, with the worker's signed consent, furnish that department with a brief description of the worker's physical limitations.

AUTHORITY: Section 349 of the *Act*.
HISTORY: April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

#99.54 Canada Pension Plan

The Board will take all reasonable steps to assist a disabled worker in obtaining benefits to which the worker may be entitled. The Board will provide the Canada Pension Plan, on request and with the worker's release, a report setting out the facts pertaining to the claim, a report to include the date and nature of the accident, the nature of the injury, a very brief résumé of the medical findings and the medical assessment of the remaining permanent disability. The Canada Pension Plan is provided with the names of practising doctors who had been involved in the case. There is no charge for this information.

The F.I.P.P. Office of the Board handles requests from the Canada Pension Plan for information. Where the Board receives a request authorized by the worker or by statute, the F.I.P.P. Office provides the Canada Pension Plan with copies of documents specified in the request. Any charge for this service is paid by the Canada Pension Plan.

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Section 349 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 reference to Medical Services Department and updated reference to F.I.P.P. Office.
September 3, 1996 – Policy that F.I.P.P. Office handles Canada Pension Plan requests came into effect.
APPLICATION: Applies on or after June 1, 2009.

#99.55 Ministry of Social Development and Poverty Reduction

If the Ministry of Social Development and Poverty Reduction has a debt owing to it, the Board will disclose to the Ministry the amount of any compensation being paid by the Board.

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Section 349 of the *Act*.
CROSS REFERENCES: Policy item #48.22, *Social Assistance Payments*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: June 1, 2009 – Updated reference to Ministry of Housing and Social Development.
APPLICATION: Applies on or after June 1, 2009.

#99.56 Police

Information may be disclosed to police departments for the purpose of contacting a next of kin or for the purposes of a law enforcement proceeding.

AUTHORITY: Section 349 of the *Act*.

#99.57 Government Employees Compensation Act

Where an election form signed by the worker is on file, information contained in third party claims for employees covered under the *Government Employees Compensation Act* may be released to the Government of Canada in order to properly pursue the right of action to which it is subrogated.

#99.60 Information to Other Board Departments

For inspection and prevention purposes, the details of any claims received where there is a potential to prevent further recurrences of the situation are referred to the Prevention Division. Examples of this would be scaffolding collapses, explosions, excavation cave-ins, dangerous work practices, etc. Referral is also made in every case where a worker complains about work safety conditions. Where the Board becomes aware of an excessive number of injuries of the same type or even of a different type with one employer, a notification of this observation is also sent to the Prevention Division.

EFFECTIVE DATE: June 1, 2009
HISTORY: June 1, 2009 – Deleted references to Claims Adjudicators and Claims Officers.
APPLICATION: Applies on or after June 1, 2009.

#99.70 Media Enquiries or Contacts

Unless designated as a media spokesperson, staff at the Board are to refer all media enquiries or contacts to the Communications Department.

EFFECTIVE DATE: June 1, 2009
HISTORY: June 1, 2009 – Updated reference to the Communications Department.
APPLICATION: Applies on or after June 1, 2009.

#99.80 Insurance Companies

On receipt of a signed consent from the worker or dependant, information from a claim file to which the worker or dependant would have access may be disclosed to an insurance company. The signed consent must be directed specifically to the Board and clearly state the information which may be released. It should also refer to a specific claim or specific claims, and must have been signed within 24 months of its date of receipt. See also policy item #48.20.

AUTHORITY: Section 235 of the *Act*.
CROSS REFERENCES: Policy item #48.20, *Money Owing by Worker to Other Agencies,* of the *Rehabilitation Services & Claims Manual*, Volume II.

#99.90 Disclosure for Research or Statistical Purposes

The Board may disclose personal information for a research purpose, including statistical research, only if:

(a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form or the research purpose has been approved by the Information and Privacy Commissioner.

(b) any record linkage is not harmful to the individuals that information is about and the benefits to be derived from the record linkage are clearly in the public interest.

(c) the Board has approved conditions relating to the following:

(i) security and confidentiality;

(ii) the removal or destruction of individual identifiers at the earliest reasonable times;

(iii) the prohibition of any subsequent use or disclosure of that information in individually identifiable form without the express authorization of the Board, and

(d) the person to whom that information is disclosed has signed an agreement to comply with the approved conditions, the provisions of the *Freedom of 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 and 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 and 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 reports could have been obtained from the worker's attending physician at no cost. A simple request to the attending physician, together with a release from the worker, would have been sufficient.

It is not the Board's intention that workers or employers should incur costs in obtaining evidence, for example, accountants' fees for producing earnings information. Rather, the general approach is that the worker or employer should advise the Board of possible sources of information and the Board should carry out the necessary inquiries. This may, for example, require the Board to request that the worker provide information considered necessary to administer the claim (see policy item #93.26).

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 reference to officer.
March 3, 2003 – Inserted references to the Review Division.
APPLICATION: Applies on or after June 1, 2009.

#100.60 Decision on Expenses

With regard to claims inquiries, any necessary decisions relating to expenses are made by the Board. With regard to reviews or appeals, decisions relating to expenses are made by 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 reference to officer.
March 3, 2003 – Inserted references to the Review Division and the Workers' Compensation Appeal Tribunal.
APPLICATION: Applies on or after June 1, 2009.

#100.70 The Awarding of Costs

The provisions in policy item #100.00 to policy item #100.60 relate to the payment of expenses by the Board. An order for the payment of costs by one party to another under section 343 of the *Act* is a separate matter, and is an alternative that may be considered in an appropriate case.

Section 343 provides:

(1) This section applies in relation to a contested claim for compensation or any other contested matter.

(2) The Board may award to the successful party an amount the Board considers reasonable to meet the expenses to which the party has been put by reason of or incidental to contesting the matter.

(3) An order of the Board for payment by an employer or worker of an amount awarded under this section, when filed in the manner provided for the filing of certificates under section 264(2) *[collection of unpaid assessment]*, becomes a judgment of the court in which the order is filed and may be enforced accordingly.

A "contested claim", for the purposes of section 343, is one in respect of which there has been a review by the Review Division by the worker or the employer.

An award under section 343 might be made on a review but only in unusual cases. The section is limited to cases where the worker or employer abuses their respective rights under the *Act*. For instance, the worker or employer may put the opposite party to the expense of an appeal for no good reason. In other words, it may appear that a review was pursued simply because the right to request a review existed and without any substantial grounds on which the position could be argued.

An award will not likely be made under section 343 in favour of a successful appellant. Section 343(2) requires that the expenses in respect of which the award is made be "by reason of or incidental to contesting the matter." Since the appeal will be proceeded with and resolved whether or not it is opposed by the other party, it cannot normally be said that the expenses of the appellant are due to the other party's "contesting" the review. If the review is not opposed by the other party, the reasons for not making an award become even stronger.

Section 6 of the *Workers Compensation Act Appeal Regulation* (B.C. Reg. 321/2002) provides that the Workers' Compensation Appeal Tribunal may award costs related to an appeal under Part 7 of the *Act* to a party if the Workers' Compensation Appeal Tribunal determines that:

- another party caused costs to be incurred without reasonable cause, or caused costs to be wasted through delay, neglect or some other fault;
- the conduct of another party has been vexatious, frivolous or abusive; or
- there are exceptional circumstances that make it unjust to deprive the successful party of costs.

EFFECTIVE DATE:	June 1, 2009
AUTHORITY:	Sections 315 and 343 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 reference to Medical Review Panel. March 3, 2003 – Inserted references to review and section 6 of the *Workers Compensation Act Appeal Regulation.*
APPLICATION:	Applies on or after June 1, 2009.

#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

reasons will be sent to the employer. The letter will advise the employer of their right to request a review by the Review Division.

Section 270 of the *Act* provides that an employer can request a review up to 90 days from the decision allowing a claim.

If the Review Division reverses the decision to allow the claim, payments are immediately terminated but no attempt is made to recover payment incorrectly made to the worker, unless there was evidence of fraud or misrepresentation. The employer's sector or rate group will be relieved of the claim costs pursuant to policy item #113.10.

EFFECTIVE DATE:	June 1, 2009
CROSS REFERENCES:	Policy item #48.41, *When Does an Overpayment of Compensation Occur?* 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. June 1, 2009 – Deleted reference to Claims Department. March 3, 2003 – Replaced policy item #105.10, which was deleted from Chapter 13 and amended to include references to the Review Division.
APPLICATION:	Applies on or after June 1, 2009.

#100.82 Appeals to the Workers' Compensation Appeal Tribunal – Reopening of Matters Previously Decided

If a decision is made to reopen a matter under section 125 of the *Act*, the employer is advised in writing. If the employer objects to this decision, the employer will be advised of the right to appeal directly to the Workers' Compensation Appeal Tribunal under section 289.

If the Workers' Compensation Appeal Tribunal reverses the decision to reopen the matter, payments are immediately terminated. No attempt is made to recover payments incorrectly made to the worker unless there was evidence of fraud or misrepresentation. The employer's sector or rate group will be relieved of the claim costs pursuant to policy item #113.10.

EFFECTIVE DATE:	June 1, 2009
AUTHORITY:	Sections 125 and 289 of the *Act*.
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. June 1, 2009 – Deleted reference to Claims Department. March 3, 2003 – Replaced policy item #105.20, which was deleted from Chapter 13 and amended to include references to the Workers' Compensation Appeal Tribunal.
APPLICATION:	Applies on or after June 1, 2009.

#100.83 Implementation of Review Division Decisions

Section 275 of the *Act* provides:

(1) If, following a review under this Part [Part 6 – Review of Board Decisions], a review officer's decision requires payments to be made to a worker or a deceased worker's dependants, the Board must

(a) begin any periodic payments, and

(b) pay any lump sum due under section 167 *[payment to dependent spouse or foster parent]*.

(2) In the absence of fraud or misrepresentation, an amount paid under subsection (1) to a worker or a deceased worker's dependants is not recoverable.

(3) If a review officer has made a decision described under subsection (1), the Board must defer the payment of any compensation applicable to the time period before that decision

(a) for a period of 40 days following the review officer's decision, and

(b) if the review officer's decision is appealed under section 288 *[appeal of review decisions]*, for a further period until the appeal tribunal has made a final decision or the appeal has been withdrawn, as the case may be.

(4) Subsection (3) applies despite the following:

(a) section 168(2) *[dependants of deceased worker]*;

(b) section 191(1) *[temporary total disability]*;

(c) section 192(1) *[temporary partial disability]*;

(d) section 194(1) *[permanent total disability]*;

(e) section 195(1) *[permanent partial disability: general rules]*;

(f) section 196(3) *[permanent partial disability: exception to general rules]*.

Section 312 of the *Act* provides:

(1) If the appeal tribunal's decision on an appeal requires the payment of compensation, all or part of which was deferred under section 275(3) *[payment following review decision]*, interest must be paid on the deferred amount of that compensation as specified in subsection (2).

(2) Interest payable under subsection (1) must be calculated in accordance with the policies of the board of directors and begins

(a) 41 days after the review officer made the appealed decision, or

(b) on an earlier day determined in accordance with the policies of the board of directors.

The procedures for implementing all Review Division decisions are as follows:

1. Any benefits payable from the date of the Review Division decision forward will be paid without delay.

2. Any benefits payable for the period of time prior to the date of the Review Division decision (retroactive benefits) will be paid after 40 days have elapsed following the date of the Review Division decision, unless an appeal has been filed with the Workers' Compensation Appeal Tribunal.

3. If there is an appeal of the decision under section 288, retroactive benefits will not be paid until the Workers' Compensation Appeal Tribunal has made a final decision or the appeal has been withdrawn.

4. The decision of the Workers' Compensation Appeal Tribunal will be implemented upon its receipt by the Board. The worker's entitlement to retroactive benefits which were deferred according to #3 above will then be determined in accordance with the decision of the Workers' Compensation Appeal Tribunal.

5. Where retroactive benefits are payable, after the decision of the Workers' Compensation Appeal Tribunal, interest is to be paid in accordance with the Board's general policy on the payment of interest on retroactive benefits as set out in policy item #50.00. Where interest is payable under section 312(1), interest will be paid beginning 41 days after the date on which the Review Division made its decision. The amount of interest to be paid is to be calculated in accordance with the interest rates set out in policy item #50.00.

EFFECTIVE DATE:	January 1, 2014
CROSS REFERENCES:	Policy item #50.00, *Interest*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY:	April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. January 1, 2015 – Housekeeping change to make consequential amendment to point #5 of policy, resulting from changes to policy item #50.00, *Interest,* of the *Rehabilitation Services & Claims Manual* Volume II made effective January 1, 2014. June 1, 2009 – Deleted reference to officer. March 3, 2003 – This policy was moved from Chapter 13 and amended to include references to then section 258 of the *Act*, the Review Division and the Workers' Compensation Appeal Tribunal and to delete a reference to former policy item #45.61.
APPLICATION:	This item applies to all decisions made on or after January 1, 2014.