

2022/05/25-03

**WORKERS' COMPENSATION BOARD
("WorkSafeBC")**

RESOLUTION OF THE BOARD OF DIRECTORS

RE: Permanent Psychological Disability Benefits Policy Review

WHEREAS:

Pursuant to section 319 of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 (*Act*), the Board of Directors of WorkSafeBC must set and revise as necessary the policies of the Board of Directors, including policies respecting occupational health and safety, compensation, rehabilitation and assessment;

AND WHEREAS:

Section 195(1)(a) of the *Act* provides if a permanent partial disability results from a worker's injury, WorkSafeBC must estimate the impairment of the worker's earning capacity from the nature and degree of the injury;

AND WHEREAS:

WorkSafeBC's Long Term Disability Services plans to implement operational changes to procedures currently set out in policy in the *Rehabilitation Services & Claims Manual (RS&CM)* regarding the determination of permanent psychological disability benefits;

AND WHEREAS:

The Policy, Regulation and Research Department (PRRD) developed amendments to Item C6-39.00, *Section 195 Permanent Partial Disability Benefits* of *RS&CM*, Volume II which provides guidance on assessing a worker's entitlement to permanent partial disability benefits under section 195 of the *Act*, including permanent psychological disability benefits;

AND WHEREAS:

The PRRD has undertaken stakeholder consultation on the amendments to Item C6-39.00, *Section 195 Permanent Partial Disability Benefits* and has advised the Board of Directors on the results of the consultation;

AND WHEREAS:

The PRRD also developed policy amendments to policy item #38.10, *Decision-Making Procedure* of *RS&CM*, Volume I which provides guidance on assessing a worker's entitlement to permanent disability benefits before June 30, 2002;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. The amendments to the *RS&CM*, Volume I and Volume II as set out in the attached Appendix 1 are approved in accordance with the following:
 - a. Amendments to Item C6-39.00, *Section 195 Permanent Partial Disability Benefits* in Volume II of the *RS&CM*, are approved, and apply to all decisions made on or after July 1, 2022; and
 - b. Amendments to policy item #38.10, *Decision-Making Procedure* in Volume I of the *RS&CM*, are approved, and apply to all decisions made on or after July 1, 2022.
2. This resolution is effective July 1, 2022.
3. This resolution constitutes a policy decision of the Board of Directors.

I, Jeff Parr, hereby certify for and on behalf of the Board of Directors of WorkSafeBC that the above resolutions were duly passed at a meeting of the Board of Directors hosted in British Columbia on May 25, 2022.

Original signed by Jeff Parr

JEFF PARR

Chair, Board of Directors

Workers' Compensation Board



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RE: Section 195 Permanent Partial Disability Benefits ITEM: C6-39.00

BACKGROUND

1. Explanatory Notes

This policy provides guidance on assessing a worker's entitlement to permanent partial disability benefits under section 195 of the *Act*.

2. The Act

Section 195:

- (1) Subject to section 196, if a permanent partial disability results from a worker's injury, the Board must
 - (a) estimate the impairment of the worker's earning capacity from the nature and degree of the injury, and
 - (b) pay the worker compensation that is a periodic payment of an amount that equals 90% of the Board's estimate of the worker's loss of average net earnings resulting from the impairment.
- (2) The minimum compensation to be paid under this section must be calculated in accordance with section 191(2) [*compensation for temporary total disability*] but to the extent only of the permanent partial disability.
- (3) The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations that may be used as a guide in determining the compensation payable in permanent partial disability cases.

POLICY

A. INTRODUCTION

Permanent partial disability benefits assessed under section 195(1), reflect the extent to which a particular injury is likely to impair a worker's ability to earn in the future.



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Permanent partial disability benefits assessed under section 195(1) also reflect such factors as:

- short term fluctuations in the compensable condition;
- reduced prospects of promotion;
- restrictions in future employment;
- reduced capacity to compete in the labour market; and
- variations in the labour market.

In assessing a worker's entitlement to permanent partial disability benefits under section 195(1), the Board may make reference to section 195(3) of the *Act*. Section 195(3) of the *Act* provides:

The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations that may be used as a guide in determining the compensation payable in permanent partial disability cases.

Once the percentage of disability is determined, it is applied to the worker's long term average net earnings, and the permanent partial disability benefits are 90% of the amount so determined.

Under the section 195(1) method of permanent partial disability assessment, a worker's percentage of disability is expressed as a percentage of total disability, with one hundred percent (100%) being the maximum possible rating for a totally disabled worker. A worker's percentage of permanent partial disability is based on the whole person. A worker, therefore, cannot be more than 100% disabled as a result of a work injury or combination of injuries.

B. DECISION-MAKING PROCEDURE UNDER SECTION 195(1)

Section 195(1) assessments are undertaken once a worker's condition has stabilized as permanent.

The Board is responsible for ensuring that the necessary examinations and other investigations are carried out with respect to the assessment and making a decision on a worker's entitlement to permanent partial disability benefits.

Section 195(1) evaluations may be conducted by the Board or a Board-authorized External Service Provider. The Board sets protocols and procedures for these evaluations. The Board determines whether the evaluation will be referred to an External Service Provider based on the nature of the condition and other relevant criteria as set out in the protocols. The Board may proceed to assess the permanent



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disability benefits without a section 195(1) evaluation if there is sufficient medical evidence already available.

~~The determination of whether there is a permanent psychological impairment, and the severity of the impairment for a section 195(1) evaluation, is made by either the Board or a Board-authorized External Service Provider. Once this evaluation is completed, the claim is referred to the Psychological Disability Committee to assess the percentage of disability resulting from the permanent psychological impairment.~~

~~The Board assesses the worker's percentage of disability for physical impairment and, in conjunction with the Psychological Disability Committee's percentage of psychological disability, determines the worker's permanent disability benefits under the section 195(1) method.~~

C. PERMANENT DISABILITY EVALUATION SCHEDULE

Section 195(1) permanent disability benefits may be made with reference to the *Permanent Disability Evaluation Schedule* ("Schedule"), which is set out in Appendix 3. This is a rating schedule of percentages of disability for specific injuries or mutilations created under section 195(3).

The *Schedule* is a set of guide-rules, not a set of fixed rules. The Board is free to apply other variables in arriving at a final rating; but the "other variables" referred to means other variables relating to the degree of physical or psychological impairment, not other variables relating to social or economic factors, nor rules (including schedules and guide-rules) established in other jurisdictions. In particular, the actual or projected loss of earnings of a worker because of the disability is not a variable which can be considered. The Board's discretion to consider other variables is generally applied to address new and emerging conditions that are not already covered in the *Schedule*.

In cases where the specific impairment is not covered by the *Schedule*, but the part of the body in question is covered, the Board must first determine the percentage of loss of function in the damaged area. This determination is based on the findings of the section 195(1) evaluation and other medical and non-medical evidence available. The final rating is arrived at by taking this percentage of the percentage allocated in the *Schedule* to the disabled part of the body. Because the *Schedule* is used in the calculation, this type of permanent disability benefit is still considered as a Scheduled one. For example, the amputation of an arm down to the proximal third of the humerus or its disarticulation at the shoulder is given a 70% of total disability rating in the Schedule. Suppose a worker has a severe crush injury to the arm which culminates in a permanent loss of half its function. The final outcome would be 50% of 70%, i.e. a 35% of total disability rating.



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D. NON-SCHEDULED RATING FOR PERMANENT DISABILITY BENEFITS

Any permanent disability benefits under section 195 where the *Schedule* is not directly or indirectly used in the assessment are non-Scheduled permanent disability benefits. This covers impairments in all parts of the body not listed in the *Schedule*. Disabilities resulting from multiple injuries or occupational diseases may also involve non-Scheduled permanent disability ratings. The rules governing respiratory and skin diseases are set out in the policy of Item C4-29.00 and Section A. of Item C4-32.00 respectively.

In the case of permanent disability benefits for non-Scheduled permanent disability ratings, judgment is used to arrive at a percentage of disability appropriate to the particular worker's impairment. Regard will be had to, among other things, the section 195(1) evaluation, the circumstances of the worker, medical opinions of Board or non-Board doctors, and to schedules used in other jurisdictions.

Neither the age adaptability or enhancement factors nor devaluation are formally applied in respect of non-Scheduled ratings for permanent disability benefits. However, in making a judgment as to the correct percentage of disability, the Board will have regard to the age of the worker, to existing disabilities in other parts of the worker's body, or to the combined effect of more than one disability in the same part of the body.

E. MINIMUM AMOUNT OF COMPENSATION FOR PERMANENT PARTIAL DISABILITY UNDER SECTION 195

Section 195(2) provides that the minimum compensation to be paid for permanent partial disabilities is calculated in the same manner as for temporary total disability but only to the extent of the permanent partial disability (see policy item #34.20). Thus, for example, if a worker is injured on January 2, 1986, resulting in a residual disability assessed at 10% of total disability, the minimum compensation will be the lesser of 10% of \$197.25 or 10% of the worker's average earnings prior to the injury.

The statutory minimum for permanent total disability under section 194 does not apply to permanent partial disability simply because a worker is found to be totally unemployable under section 196. (See Item C6-37.00.)

i. Injury Prior to January 1, 1965

Permanent partial disability benefits provided for injuries that occurred before January 1, 1965 are recalculated in accordance with the then minimum for permanent total disability but to the extent only of the partial disability. This minimum was an amount equal to \$30.00 per week (\$130.00 per month), unless the worker's average

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earnings were less, in which case compensation is paid in an amount equal to the average earnings.

Any increase resulting from the above provisions does not apply to commuted permanent disability benefits or the commuted portion of a worker's permanent disability benefits.

In considering whether the worker's earnings are less than the minimum, only the worker's actual earnings are relevant.

EFFECTIVE DATE:	January 1, 2021 July 1, 2022
AUTHORITY:	Section 195 of the Act.
CROSS REFERENCES:	Policy item #34.20, <i>Minimum Amount of Compensation for Temporary Total Disability</i> ; C6-37.00, <i>Permanent Total Disability Benefits</i> ; C6-40.00, <i>Section 196 Permanent Partial Disability Benefits</i> ; Appendix 3, <i>Permanent Disability Evaluation Schedule</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	July 1, 2022 – Policy amended to remove procedures specific to determining permanent psychological disability benefits. January 1, 2021 – This policy resulted from the consolidation of former policy items #39.00, #39.01, #39.10, #39.20, #39.30, and #39.31, consequential to reformatting and renumbering policies in Chapter 6, <i>Permanent Disability Benefits</i> . Policy changes consequential to implementing the permanent partial disability benefits provisions of the <i>Workers Compensation Amendment Act, 2020</i> (Bill 23). September 1, 2020 – Housekeeping change was made to correct a grammatical error and to add the title of Appendix 3 to the Cross Reference section. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. January 1, 2015 – Consequential amendments were made arising from changes to the <i>Permanent Disability Evaluation Schedule</i> . June 1, 2009 – Removed references to Board officer, Rehabilitation and Compensation Services Division, Disability Awards Medical Advisor and Board authorized External Service Provider. August 1, 2003 – Deletion of statements regarding revisions to the <i>Schedule</i> and housekeeping changes.
APPLICATION:	Applies to all decisions, including appellate decisions, made on or after January 1, 2021 July 1, 2022 .

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#38.10 Decision-Making Procedure

The Disability Awards Officer or Adjudicator in Disability Awards is responsible for seeing that the necessary examinations and other investigations are carried out with respect to the physical **and/or psychological** impairment assessment and they make the decision on the degree of disability and whether a pension should be awarded.

Permanent functional impairment evaluations will be conducted by either a Disability Awards Medical Advisor or a Board authorized External Service Provider. The Rehabilitation & Compensation Services Division sets protocols and procedures for these evaluations. The Board determines whether the evaluation is referred to a Disability Awards Medical Advisor or an External Service Provider based on the nature of the injury and other relevant criteria as set out in the protocols.

~~The determination of whether there is a permanent psychological impairment, and the severity of the impairment, is made by either a Board Psychologist or a Board authorized External Service Provider. Once this evaluation is completed, the claim is referred to the Psychological Disability Committee to assess the percentage of disability resulting from the permanent psychological impairment. The Disability Awards Officer or Adjudicator assesses any percentage of disability for physical **and/or psychological** impairment and, in conjunction with the Committee's percentage of psychological disability, decides the worker's permanent disability award under the loss of function method.~~

~~The Disability Awards Committee is ultimately responsible for the conclusion on projected loss of earnings awards implemented under section 23(3) of the Act. The Disability Awards Officer or Adjudicator is required to conduct the necessary investigations and make a specific recommendation to the committee. It is the function of the committee, following any further investigation it considers necessary, to agree or disagree with the Disability Awards Officer's or Adjudicator's recommendation. If the committee agrees, the Disability Awards Officer or Adjudicator will establish a pension according to the initial recommendation. If the committee disagrees with the Disability Awards Officer's or Adjudicator's recommendation, it will either establish an award which it deems appropriate to the circumstances or return the file for further investigation. The Disability Awards Committee consists of one senior representative from the Disability Awards, Medical, and Vocational Rehabilitation Services Departments.~~

~~Physical impairment and projected loss of earnings assessments are made at the same time. It is not proper to establish a physical impairment pension alone and delay a projected loss of earnings assessment on the grounds that it is difficult at the time to assess the claimant's potential loss of earnings. An assessment must be made, however great the difficulty. A decision may be reopened where a ground for reopening is met (see Chapter 14).~~

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The rules of evidence followed by Disability Awards Officers, **and** Adjudicators ~~and the Disability Awards Committee~~ are discussed in policy item #97.40.

EFFECTIVE: **July 1, 2022 (to remove procedures specific to determining permanent psychological disability benefits)**
~~March 3, 2003 (as to reference to reopening and deletion of references to pension review and appeals)~~

APPLICATION: Not applicable.