

Practice Directive #C6-1

Permanent Partial Disability Benefits

General principles

A WorkSafeBC officer determines whether there is an actual or potential permanent disability once a worker's compensable condition has stabilized (reached a medical plateau).

In all cases where a permanent partial disability results from a work injury, the worker's entitlement to permanent partial disability benefits is assessed using the loss of function/functional impairment method set out in section 195(1) and loss of earnings method under section 196(3) of the *Workers Compensation Act* (the "Act"). The worker receives permanent disability benefits based on the loss of function or loss of earnings calculation, whichever is greater.

Merits and justice

WorkSafeBC must make decisions based on the merits and justice of the case, but in so doing WorkSafeBC must apply policy that is applicable.

In making decisions, WorkSafeBC must take into account all relevant facts and circumstances relating to the case before it, including the worker's individual circumstances. In doing so, WorkSafeBC must consider the relevant provisions of the *Act* and the relevant policies.

If there are specific directions in the *Act* or policy that are relevant to those facts and circumstances, WorkSafeBC applies them.

Where the *Act* and policy provide for discretion, the officer is also required to exercise that discretion based upon the merits and justice of the case, in accordance with the *Act* and applicable policy.

Adjudicative guidelines

Once a worker's temporary disability ceases and the compensable condition is considered to have stabilized (reached a medical plateau), the officer determines whether there is an actual or potential permanent disability.

In all cases where a permanent partial disability results from a work injury, a worker's entitlement to permanent partial disability benefits is assessed using the methods set out in sections 195(1) and 196(3) of the *Act*. If the permanent disability benefits assessed under section 195(1) are less than that under section 196(3), the worker's permanent disability benefits are determined under section 196(3). This

practice directive addresses the assessments under section 195(1), the “loss of function” method and section 196(3), the “loss of earnings” method.

Referral for an assessment of entitlement to permanent disability benefits

A worker is referred for an assessment of entitlement to permanent disability benefits when the worker does not completely recover from a work-related injury or occupational disease and is left with a permanent residual disability.

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

Monitoring a worker’s recovery

Officers continually monitor a worker’s recovery from a work-related condition. Return to work is part of the recovery process and can be key to minimizing the likelihood of a permanent disability. Where appropriate, officers expedite health care and return-to-work services to promote return to work and full recovery. As officers monitor the worker’s recovery, they consider whether the worker’s condition has stabilized or whether there is evidence of ongoing disability.¹

Requesting reports or forms from a worker’s physician

Officers collect information and weigh evidence to make adjudicative decisions on a worker’s entitlement to benefits and services.

In order to make adjudicative decisions, officers gather relevant evidence and determine whether it is sufficiently complete and reliable to arrive at a sound conclusion with confidence. If not, they consider what other evidence might be obtained, and take the initiative in seeking further evidence. Then, they weigh the available evidence and proceed to make their decisions.

When deciding on whether a worker is entitled to a referral for a permanent disability assessment, the officer offers the worker and their physician an opportunity to provide evidence. The identification of a stabilized condition is an adjudicative concept that is not always specified in medical reports. Physician progress reports focus on point-in-time symptoms, treatment, and return-to-work planning. They are not intended to address whether the worker’s condition is temporary or permanent.

The officer may request medical reports or forms be filled out by the worker’s physician and/or consider contacting the physician for further discussion. Such information may assist with assessing the adequacy of the treatment received and the likelihood of further, significant improvement.

When has a worker’s condition stabilized?

The officer reviews the evidence and decides whether the worker’s condition is permanent to the extent that permanent disability benefits should be assessed. A condition will be deemed to have stabilized or plateaued where there is little potential for significant improvement within the next 12 months, or where any potential changes are in keeping with the normal fluctuations in the condition which can be expected

¹ See policy item #34.54, *When is the Worker’s Condition Stabilized*.

with that kind of disability. The focus of the analysis is the potential for change of the compensable condition.

If an officer determines that a worker's condition has stabilized and there is an actual or potential permanent disability, the worker is entitled to be assessed for permanent disability benefits.

Officers can refer to the *Permanent Disability Evaluation Schedule*² for guidance when determining whether there is an actual or potential permanent disability.

Starting the process

Prior to concluding temporary disability benefits, the officer gathers and documents the following information on the claim:

- critical job demands;
- permanent condition(s) accepted;
- permanent medical restrictions resulting from the compensable disability – activities that should not be undertaken because of risk of injury or further injury; and
- permanent physical/psychological limitations resulting from the compensable disability – tasks that cannot be performed due to the compensable condition.

Assessing permanent partial disability benefits under the loss of function method

A loss of function assessment is undertaken when the worker's condition has stabilized as permanent. Under the loss of function method of permanent partial disability assessment, a worker's percentage of disability is expressed as a percentage of total disability, with 100 percent being the maximum rating for a worker with total disability. A worker's percentage of permanent partial disability is based on the whole person. A worker cannot be more than 100 percent disabled as a result of a work injury or combination of injuries.

The percentage of disability determined for the worker's condition under the loss of function method reflects the extent to which a particular injury is likely to impair a worker's ability to earn in the future.

Permanent partial disability benefits assessed under the loss of function method also reflect factors such 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.

² See Appendix 3 of the *Rehabilitation Services and Claims Manual*, Volume II (the "RSCM").

In making a loss of function assessment, an evaluation may be completed by WorkSafeBC or an authorized external service provider. However, if there is sufficient clinical evidence already available on file to make a reasoned decision on the worker's permanent impairment, a referral for medical evaluation may not be required.

Significant change in the medical condition

A worker may experience a significant change in their medical condition that WorkSafeBC had previously decided was compensable. In these cases, WorkSafeBC may reopen the worker's claim and assess or reassess the worker's permanent functional impairment.³ Where the worker experiences a change in permanent disability under the loss of function method, the worker will also be considered for entitlement under the loss of earnings method.

Assessing permanent partial disability benefits under the loss of earnings method

Entitlement under the loss of earnings method requires WorkSafeBC to determine the amount that it considers best represents the worker's loss of earnings:

- the average net earnings that the worker is earning after the injury, or
- the average net earnings that WorkSafeBC estimates a worker is capable of earning in a suitable occupation.

In assessing the worker's loss of earnings, WorkSafeBC assesses a worker's post-injury earning capacity. This assessment may take various forms depending on the facts and circumstances of the case.⁴ A comprehensive assessment (i.e., employability assessment) may be required in cases where a worker has not returned to their pre-injury employment and requires vocational assistance in identifying a suitable occupation. In other cases, a comprehensive assessment may not be required such as when the worker returns to pre-injury employment that maximizes their earning capacity up to the pre-injury wage rate.⁵ As part of the assessment, WorkSafeBC provides the worker an opportunity to respond to the conclusions in the assessment, prior to making a decision on the worker's permanent disability benefits calculated under the loss of earnings method.

Considerations where a worker returns to their pre-injury employment

A worker who returns to work in their pre-injury employment may not experience a loss of earnings. However, there may be instances where a worker may experience a loss of earnings. These instances may include situations where, the worker is unable to pursue overtime work that they regularly undertook prior to the injury or they have reduced hours at their pre-injury employment, due to the compensable condition. In these cases, after vocational rehabilitation assistance has been considered and offered (as

³ See Practice Directive #C14-3, *Reopenings*.

⁴ See Item C11-89.00, *Vocational Rehabilitation – Employability Assessments – Temporary Partial Disability and Permanent Partial Disability*

⁵ See Item C11-85.00, *Vocational Rehabilitation – Principles and Goals and Item and C11-89.00, Vocational Rehabilitation – Employability Assessments – Temporary Partial Disability and Permanent Partial Disability*.

appropriate)⁶, the officer may conclude that the worker has maximized their earning capacity and may experience a loss of earnings. In determining the loss, WorkSafeBC assesses the difference between the pre-injury earnings (i.e., the average net earnings used to calculate the long-term wage rate that would apply to permanent disability benefits) and the post-injury earnings (i.e., the average net earnings that the worker is earning after the injury). To establish the post-injury earnings, WorkSafeBC determines the projected long-term earnings capacity and provides the worker an opportunity to respond to the recommendation. WorkSafeBC considers the worker's response prior to making a decision on the worker's permanent disability benefits calculated under the loss of earnings method.

Considerations where a worker returns to a suitable occupation

Where a worker is unable to return to their pre-injury employment, vocational rehabilitation assistance may be provided to support a worker in their efforts to return to the workforce in a suitable occupation that maximizes long-term earning capacity up to the pre-injury wage rate.

Generally, an occupation will be considered suitable where the worker has, or can reasonably attain and perform, the necessary skills (e.g., duties, responsibilities, physical and psychological demands, training and/or education) that the occupation requires.

When identifying possible suitable occupations for a worker, the officer considers the following factors (not an exhaustive list):

- the worker's transferable skills,
- the worker's education, training and previous work experience,
- the worker's post-injury functional abilities ,
- the worker's restrictions and limitations resulting from the compensable disability,
- whether the occupation is reasonably available and has the durability over the long term (generally three to five years from the date the worker's post-injury employability is being assessed). A reasonably available occupation is usually within a reasonable commuting distance of the worker's home.
- whether the occupation would maximize the worker's long-term earnings potential, up to the pre-injury wage rate.

In all cases, the officer considers the worker's individual circumstances.

The officer in Long Term Disability Services may use information from the vocational rehabilitation consultant (VRC) to identify a suitable occupation. The information may include:

- occupation(s) that the worker is employed in post-injury that are suitable and maximize the worker's long-term earning capacity; and/or
- occupation(s) identified in a rehabilitation plan.

⁶ WorkSafeBC considers and offers to the worker all rehabilitation measures which are reasonable and might be of assistance to the worker.

Where a worker was employed in more than one occupation at the time of the injury, WorkSafeBC determines whether any of the worker's pre-injury occupations is a suitable occupation.⁷

Comparing benefit entitlement under the loss of function vs. loss of earnings

Once the worker's loss of function and loss of earnings have been determined, the officer compares the results of the two assessments. The worker's average net earnings are used when comparing the results from both assessments. The worker receives permanent disability benefits based on the loss of function or loss of earnings calculation, whichever is greater.

Approval of loss of earnings permanent disability benefits

A Claims and Rehabilitation Services manager approves the post-injury earnings that will be used to calculate the permanent disability benefits payable under the loss of earnings method.

Adjusting for CPP disability benefits

The worker's permanent partial disability benefits may be adjusted if the worker is receiving CPP disability benefits for the same injury, subject to the statutory minimum.⁸

Duration of permanent partial disability benefits

Payment of permanent disability benefits continue to the date the worker reaches age 65, which is recognized as the standard age of retirement, or a later date, if WorkSafeBC is satisfied that the worker would have worked beyond the age of 65. Where the worker is 63 or older at the time of injury, benefits will be paid for a maximum of two years from the date of the injury, unless WorkSafeBC is satisfied that the worker would have worked beyond the age of 65. When the worker reaches age 65, or on the date of their last monthly periodic payment, if after age 65, the periodic payments conclude and a lump-sum retirement benefit is provided.⁹

Cross references

RSCM Policy	#34.54, <i>When is the Worker's Condition Stabilized</i>
	C6-39.00, <i>Section 195 Permanent Partial Disability Benefits</i>
	C6-40.00, <i>Section 196 Permanent Partial Disability Benefits</i>
	C11-85.00, <i>Vocational Rehabilitation – Principles and Goals</i>
	C11-89.00, <i>Vocational Rehabilitation – Employability Assessments – Temporary Partial Disability and Permanent Partial Disability</i>
	#96.30, <i>Permanent Disability Benefits Decision-Making Procedures</i>

⁷ For example, a worker's pre-injury occupation may include part-time teaching and part-time carpentry. The worker may not be able to restore their earnings post-injury in the carpentry employment. However, teaching might be considered a suitable occupation.

⁸ See section 202 of the *Act*.

⁹ See Practice Directive #C5-1, *Duration of Benefits – Age 65*

Appendix 3, *Permanent Disability Evaluation Schedule*

Practice Directives #C5-1, *Duration of Benefits – Age 65*

#C14-3, *Reopenings*

History: This Practice Directive was first issued on March 3, 2003. On December 2, 2019, this Practice Directive was amended to reinforce key adjudicative considerations for determining whether a referral for permanent disability assessment is appropriate. It also highlights consideration of the merits and justice of the case. In addition, content was reorganized. On February 28, 2020, this Practice Directive was amended to align with policy changes that came into effect on February 1, 2020. The policy amendments provide guidance on legal issues of standard of proof, evidence and causation. This Practice Directive was amended to reflect changes made to the *Workers Compensation Act* made effective on April 6, 2020 as part of a standard statute revision process. The Practice Directive was amended on January 1, 2021 to reflect changes made under the *Workers Compensation Amendment Act, 2020*, ("Bill 23") and policy changes that came into effect on January 1, 2021. This Practice Directive was updated on December 30, 2021 to reflect changes in WorkSafeBC's organizational structure. On October 3, 2022 the Practice Directive was amended to align with revisions to policy changes that came into effect September 1, 2022.

Application: This item is intended to provide guidance on the assessment of permanent disability benefits. It applies to loss of function and loss of earnings decisions made on and after January 1, 2021, in respect of a claim made but not finally adjudicated before January 1, 2021. It applies to an injury, occupational disease or mental disorder that occurred before January 1, 2021. It also applies to claims filed after January 1, 2021.