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June 2024 Update 2024 – 3

**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 – 2.

The revised policy pages are for:

- Item C3-22.40, *Compensable Consequences – Certain Diseases and Conditions*
- Housekeeping amendments to various policies to modernize terminology by removing gendered language.

A summary is attached, and the amended pages are included as part of the package effective **June 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 – 3**

| Chapter | Policy | Pages | Change |
|---|---|---|---|
| Chapter 3 | Item C3-16.00 | Pages 1 to 3 | Housekeeping |
| | Item C3-17.00 | Pages 1 to 5 | Housekeeping |
| | Item C3-19.00 | Pages 1 to 2 and 5 to 8 | Housekeeping |
| | Item C3-19.10 | Pages 1 to 2 | Housekeeping |
| | Item C3-21.00 | Pages 3 to 8 | Housekeeping |
| | Item C3-22.20 | Pages 3 to 4 | Housekeeping |
| | Item C3-22.40 | Pages 1 to 3 | Amended |
| | Item C3-24.00 | Pages 3 to 4 and 7 to 8 | Housekeeping |
| Chapter 8 | Item C8-53.00 | Pages 3 to 4 | Housekeeping |
| | Item C8-53.20 | Pages 3 to 4 | Housekeeping |
| | Item C8-56.20 | Pages 3 to 5 | Housekeeping |
| | Item C8-56.70 | Pages 1 to 3 | Housekeeping |
| Chapter 9 | Policy item #68.62 | Pages 9-29 to 9-32 | Housekeeping |
| Chapter 10 | Item C10-72.00 | Pages 5 to 7 | Housekeeping |
| | Item C10-73.00 | Pages 3 to 7 | Housekeeping |
| | Item C10-74.00 | Pages 3 to 4 and 7 | Housekeeping |
| | Item C10-75.00 | Pages 3 to 5 | Housekeeping |
| Chapter 14 | Item C14-103.01 | Pages 5 to 7 | Housekeeping |

**RE: Pre-Existing Conditions or Diseases** **ITEM: C3-16.00**

# BACKGROUND

## 1. Explanatory Notes

This policy provides guidance on distinguishing between injuries or death that arise out of and in the course of a worker's employment, and injuries or death that result from a worker's pre-existing conditions or diseases.

## 2. The Act

Section 134(1):

> If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.

# POLICY

## A. General

It is necessary to distinguish between injuries or death resulting from a worker's employment (which are compensable), and injuries or death resulting from a worker's pre-existing conditions or diseases (which are not compensable).

An injury or death is not compensable simply because it happened at work. It is also necessary to determine that it arose out of the worker's employment. This means that there must have been something in the worker's employment activity or situation that had causative significance in producing the injury or death.

A pre-existing condition or disease may be aggravated by an employment-related incident or trauma, or series of incidents or traumas. In such cases, the worker's resulting injury or death may be compensable.

In adjudicating these types of claims, the Board considers:

- the nature and extent of the pre-existing condition or disease;
- the nature and extent of the employment activity; and

- the relationship between the pre-existing condition or disease and the employment activity, including the degree to which the employment activity may have affected the pre-existing condition or disease.

Evidence that the pre-existing condition or disease has been accelerated, activated or advanced more quickly than would have occurred in the absence of the employment activity, may be confirmation that the aggravation resulted from the employment activity.

## B. Pre-Existing Deteriorating Condition or Disease

If a worker's pre-existing condition or disease is a *deteriorating* condition or disease, the evidence is examined to determine whether or not, at the time of the injury or death, the pre-existing deteriorating condition or disease was at a critical point at which it was likely to result in a manifest disability.

If the injury or death is one that the worker would have sustained whether at work, at home, or elsewhere, regardless of the employment activity, then the employment was not of causative significance, and the injury or death is considered to have resulted from the pre-existing deteriorating condition or disease and is not compensable.

On the other hand, if the injury or death is one that the worker would not have sustained for months or years, but for the exceptional strain or circumstance of the employment activity, then the employment is of causative significance, and the injury or death may be compensable.

An example may help to illustrate the distinction. If the evidence shows that a worker has a pre-existing deteriorating heart condition, which could result in a heart attack at any time, an employment activity such as walking up one flight of stairs to their office would not mean that the employment activity was of causative significance in a resulting heart attack. On the other hand, if the worker was at the bottom-end of moving a 300-pound load up a flight of stairs, and the load slipped, causing the worker fright and strain, that strain or circumstance may mean that the employment activity was of causative significance and the resulting heart attack arose out of and in the course of the worker's employment.

In all cases, the medical and factual evidence is considered together, in order to determine the causative significance of the pre-existing deteriorating condition or disease, and the employment activity or situation, in the resulting injury or death.

## C. Pre-Existing Non-Deteriorating Condition or Disease

If a worker's pre-existing condition or disease is not a deteriorating condition or disease, it may be said that an event at work "triggered" the pre-existing condition or disease resulting in an injury or death. This does not mean, however, that the resulting injury or disease is compensable. The circumstances, including the condition of the worker, are considered to determine whether the employment was of causative significance.

For example, a worker's injury resulting from falling to the floor during an epileptic seizure would likely occur regardless of the worker's employment activity. The employment activity would therefore be considered trivial or insignificant and the injury not compensable.

On the other hand, if the employment activity or situation results in injuries or death beyond those that might have flowed from the pre-existing condition or disease, the additional injuries or death resulting from the employment activity or situation may be compensable. For example, the causative significance of a worker's employment activity would be much more than trivial or insignificant where a worker's injury results from falling off a twelve foot scaffold during an epileptic seizure. Here, the employment situation results in injuries beyond those that might have flowed from the pre-existing condition, and though the epileptic seizure itself is not a compensable injury, the injuries resulting from falling off the scaffold may be compensable, due to the significance of the employment situation.

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| **EFFECTIVE DATE:** | February 1, 2020 |
| **AUTHORITY:** | Section 134(1) of the *Act.* |
| **CROSS REFERENCES:** | Policy item #26.55, *Aggravation of a Disease*;<br>Policy item #114.40, *Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability*;<br>Policy item #114.41, *Relationship Between Sections 146 and 240(1)(d)*;<br>Policy item #115.30, *Experience Rating Cost Exclusions*, of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **HISTORY:** | June 1, 2024 − Housekeeping changes made to modernize terminology by removing gendered language.<br>April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.<br>February 1, 2020 – Policy amended to provide guidance on the legal issues of standard of proof, evidence, and causation.<br>July 1, 2010 – This policy replaced former policy items #15.00, #15.10 and #15.30 of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **APPLICATION:** | Applies to all decisions made on or after February 1, 2020, respecting claims for injuries occurring on or after July 1, 2010. |

**RE: Deviations from Employment** **ITEM: C3-17.00**

# BACKGROUND

## 1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation where a worker's participation in an unauthorized activity may have had causative significance in the worker's personal injury or death.

## 2. The Act

Section 134(1):

> If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.

# POLICY

## A. Introduction

Item C3-14.00 is the principal policy that provides guidance in deciding whether or not an injury or death arises out of and in the course of a worker's employment. In some circumstances, evidence supporting one component of the employment-connection test may be clear, while evidence supporting the other component is questionable, because the worker did something that was unauthorized by the employer, the employer condoned an unsafe practice, or some emergency forced the worker to act.

In considering whether an injury or death arose out of and in the course of a worker's employment, all relevant factors are taken into consideration including the causative significance of the worker's conduct in the occurrence of the injury or death and whether the worker's conduct was such a substantial deviation from the reasonable expectations of employment as to take the worker out of the course of the employment. An insubstantial deviation does not prevent an injury or death from being held to have arisen out of and in the course of a worker's employment.

Once it has been established that a worker's injury or death arose out of and in the course of the worker's employment, consideration may be given to whether the injury or

death is attributable solely to the serious and wilful misconduct of the worker under section 134(2) of the *Act*. (See Item C3-14.10.)

If a worker's injury or death is the result of a crime or an emergency action to prevent a crime, there may be entitlement to benefits under the *Crime Victim Assistance Act*, S.B.C. 2001, c.38, distinct from those available under the *Workers Compensation Act*.

The following provides guidance as to how some of the factors in Item C3-14.00 may be applied when considering the causative significance of a worker's unauthorized activity in the worker's personal injury or death.

## B. Instructions of the Employer

It is clearly impossible for an employer to lay down fixed rules covering every detail of a worker's employment activity, so workers may be uncertain as to the limits of their work. Carelessness or exercising bad judgment are not bars to compensation where it is reasonable that a worker would exercise some discretion as part of the worker's employment. Thus an act that is done in good faith for the purpose of the employer's business may form part of a worker's employment, even if not specifically authorized by the employer.

On the other hand, a worker's injury or death may not be considered to arise out of and in the course of the worker's employment if the worker's act is specifically prohibited by an employer or is known or should reasonably have been known to the worker to be unauthorized, or if the worker has been previously warned against doing it. This is so even if the act could legitimately benefit the employer.

## C. For Employer's Benefit

A worker's injury or death may be considered to arise out of and in the course of the worker's employment if the worker is acting to protect the employer's interests during an emergency. This may include protecting the employer's property or protecting an individual who is associated with the employment, such as a fellow worker or customer.

A worker's injury or death is not likely to be considered to arise out of and in the course of the worker's employment if the emergency action is that of a public spirited citizen, where the worker was doing no more than anyone would do, whether or not working for an employer at the time.

The distinction can perhaps best be illustrated by an example. A worker's injury or death may be considered to arise out of and in the course of the worker's employment where the worker receives a telephone call at work indicating that there is a fire in a portion of the employer's premises. The worker races from the office and, due only to haste, falls and injures an arm. There is no doubt that in light of the relationship of the emergency to the employment, this injury would be compensable.

On the other hand, a worker's injury or death is not likely to be considered to arise out of and in the course of the worker's employment where the worker receives a telephone call to the effect that a family member has been seriously injured in an accident. Once again the worker races from the office and, due only to haste, falls and injures an arm. The reason for the worker's departure is unrelated to the employment and nothing about the employment contributed to the injury.

The fact that the employment places a worker in a position to observe an emergency cannot be of itself a determinative factor in granting compensation.

## D. Part of Job

If a generally unauthorized activity such as alcohol consumption is part of the permitted activities of the employment, a worker's employment may be considered to have causative significance in any injury or death that results from intoxication. For example, bartenders or sales representatives may be encouraged or permitted by their employers to drink with customers. The causative significance of the employment may be considered trivial or insignificant if the worker goes beyond the pursuit of the employer's interests to engage in a social event.

If a generally unauthorized activity such as alcohol consumption is not a permitted part of the employment, this does not automatically mean that an injury or death involving alcohol consumption did not also arise out of and in the course of a worker's employment. The Board considers the employment-connection test set out in Item C3-14.00 to determine whether the employment factors of the situation were of causative significance. Where the causative significance of the alcohol consumption is predominant in the resulting injury or death, and the employment factors are neutral or non-existent, this does not favour coverage.

## E. On Employer's Premises

If an injury or death occurs in the course of the worker's employment and there are no other employment factors of causative significance to satisfy the "arising out of" component of the employment test, the injury or death will not be considered to arise out of and in the course of the worker's employment.

For example, if a worker stumbles while walking over normal ground as a result of intoxication or impairment, and is injured in the fall, nothing in the employment would have had any causative significance in producing the injury.

## F. Activity of the Employer, a Fellow Employee or the Worker

### i. Horseplay

If a generally unauthorized activity such as horseplay is a contributing factor of a worker's injury or death, the Board considers the degree of participation of the worker in the horseplay. For instance, a worker who instigates or provokes horseplay will more likely be considered to have made a substantial deviation from the course of the worker's employment than a worker who simply reacts to actions commenced or provoked by someone else.

The duration and seriousness of a worker's horseplay is also of relevance in considering whether there has been a substantial deviation from the course of the worker's employment. For example, if a worker walks over to a co-employee to engage in a friendly word, and accompanies this with a playful jab in the ribs, this is a trivial incident which would probably be considered an insubstantial deviation. On the other hand, playing a game of tag while driving the employer's forklifts would be considered a more substantial deviation.

### ii Assault

If a worker's injury or death is the result of an assault that arises out of and in the course of the worker's employment, the worker may be entitled to compensation. However, if the worker's injury or death is the result of an assault that the worker initiated, this may constitute a substantial deviation from the course of the worker's employment.

The Board considers the spontaneity of the assault, whether the worker's aggressive response is in proportion to a triggering incident or provocation, whether there is a connection between the employment and the subject matter of the dispute that led to the assault. Where the actions or response of a worker are extreme or are out of proportion to a triggering incident or provocation, this may be an indication that the assault is of a more personal nature. If the subject matter of the dispute that led to the assault is a personal matter, the injury or death is not considered to have arisen out of and in the course of a worker's employment.

Just as a worker's initiation of an assault may take the worker out of the course of the employment, an assailant's attack on a worker may bring the worker into the course of the employment, even though the assault does not occur at the workplace or during working hours. An assailant may be an employer, fellow worker or a non-worker (for example, a client or customer).

In these cases, the facts of the situation as to whether the assault is clearly related to the worker's employment are carefully considered to determine whether the employment was of causative significance. If the employment aspects of the assault are more than just an incidental intrusion into the personal life of the worker at the moment of the injury or death, the worker may be entitled to compensation.

The term "assault", as used in this policy, includes sexual assault.

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| **EFFECTIVE DATE:** | July 1, 2010 |
| **AUTHORITY:** | Section 134(1) of the *Act.* |
| **CROSS REFERENCES:** | Item C3-14.00, *Arising Out of and In the Course of a Worker's Employment*;<br>Item C3-14.10, *Serious and Wilful Misconduct*;<br>Item C3-18.00, *Personal Acts*, of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **HISTORY:** | June 1, 2024 − Housekeeping changes made to modernize terminology by removing gendered language.<br>April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.<br>July 1, 2020 − This policy resulted from the consolidation of former policy items #16.00, #16.10, #16.20, #16.30, #16.40 and #16.50 of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **APPLICATION:** | This Item applies to all claims for injuries occurring on or after July 1, 2010. |

**RE: Work-Related Travel** **ITEM: C3-19.00**

# BACKGROUND

## 1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation for personal injury or death when engaged in work-related travel.

## 2. The Act

Section 134(1):

> If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.

# POLICY

The general policy related to travel is that injuries or death occurring in the course of travel from the worker's home to the normal place of employment are not compensable. On the other hand, where a worker is employed to travel, injuries or death occurring in the course of travel may be covered. This is so whether the travel is a normal part of the job or is exceptional. In these cases, the worker is generally considered to be traveling in the course of the worker's employment from the time the worker commences travel on the public roadway.

In assessing work-related travel cases, the general factors listed under Item C3-14.00 are considered. Item C3-14.00 is the principal policy that provides guidance in deciding whether or not an injury or death arises out of and in the course of a worker's employment.

## A. Regular Commute

An employment connection generally begins when the worker enters the employer's premises for the commencement of a shift, and terminates on the worker leaving the premises following the end of the shift.

Therefore, a worker's regular commute between home and the normal, regular or fixed place of employment is not generally considered to have an employment connection. This includes injuries or death that occur on a worker's regular or routine commute where:

- the employer provides the worker with a vehicle for the purpose of work and also allows the worker to use the vehicle for personal use outside of work hours; or
- the worker commutes to work in their own vehicle and uses the vehicle for a work purpose during the worker's shift.

There are, however, certain situations when a worker's regular commute may be considered part of a worker's employment.

The following provides guidance as to how some of the factors in Item C3-14.00 may be applied when considering specific cases relating to a worker's regular commute.

### 1. On Employer's Premises

Did the injury or death occur on the employer's premises? If so, this is a factor that favours coverage.

It is the responsibility of an employer to provide a safe means of access to and egress from the place of work. Thus, where a worker is traveling by public roadway to a place of work that is not adjacent to the public roadway, and must travel along a captive road or through a special hazard before reaching the employer's premises, the employment connection may begin at the point of departure from the public roadway rather than at the point of entry to the employer's premises.

It is not considered significant that an injury or death occurs while a worker is seeking to gain access to the employer's premises by a method that is different from that which the employer intends. However, it may be considered significant if the worker chooses a method that the worker has been advised is specifically forbidden by the employer, or if the worker chooses a route that is clearly dangerous.

#### a. Captive Road

Where a road is public, but as a practical matter is controlled by and leads only to the premises of the particular employer, the road can effectively be regarded as part of the employer's premises. The employer's control may be demonstrated by the fact that the employer makes decisions on maintenance or repairs of the public road. This is known as the "captive road" doctrine.

employment. This additional circumstance may be sufficient to bring all or part of the journey within the scope of the worker's employment.

The remoteness of a work site and the limited availability of transportation are factors which may suggest that a journey to or from the work site may be part of the employment. A journey between an established town and a remote place consisting only of a work site may be more hazardous and therefore more likely to favour coverage than a journey between two towns or cities with regular and established means of transportation.

If a person travels some distance on their own initiative looking for whatever jobs may be found, the person takes the risk of travel upon themselves.

## C. Traveling Employees

"Traveling employees" are workers who:

- typically travel to more than one work location in the course of a normal work day as part of their employment duties; or

- have a normal, regular or fixed place of employment, and are directed by the employer to temporarily work at a place other than the normal, regular or fixed place of employment.

An employment connection generally exists throughout the travel undertaken by traveling employees, provided they travel reasonably directly and do not make major deviations for personal reasons. This is so regardless of whether public or private transportation is used.

An employment connection may not exist for the portion of travel between the traveling employee's home and the employer's premises that is undertaken at the commencement or termination of each work day. These workers may be considered to be on a "regular commute" for that portion of their travel, which is discussed in Section A above.

Examples of traveling employees include, but are not limited to, taxi drivers, emergency response personnel, transport-industry drivers, cable installers, home care workers, many sales representatives, and persons attending off-site business meetings.

One factor from Item C3-14.00 that may require further explanation in its application to specific cases relating to traveling employees is whether the travel is part of the job.

Travel to different work locations has an employment connection where a worker:

- terminates productive activity at one work location and travels to another work location to commence productive activity for the same employer. This is so

regardless of whether the worker was paid a salary or other consideration for the travel;

- travels from the employer's premises or assembly area, to another work location, after first reporting to the employer. This applies to a temporary worker who commutes to a labour supply firm each day, and then is dispatched to a client as, in these cases, the labour supply firm is the employer. This does not apply to a worker who goes to a union hiring hall and then is dispatched to an employer. The worker's travel from home to the employer's premises or assembly area would be considered a regular commute. The worker's travel from the employer's premises or assembly area to the point where the worker will begin work is normally considered to have an employment connection;

- routinely commences or terminates productive activity at varying work locations in the course of a normal work day. In these situations, the worker is generally considered to be in the course of the worker's employment from the time the worker commences travel on the public roadway. This could apply, for example, to cable installers and pharmaceutical sales representatives; or

- travels from home to a temporary place of work without first traveling to the normal, regular or fixed place of employment. Again, the employment connection begins when the worker commences travel on the public roadway.

An employment connection generally exists for traveling employees during normal meal or other incidental breaks, such as using the washroom facilities, so long as the worker does not make a distinct departure of a personal nature.

## D. Business Trips

The general factors listed under Item C3-14.00 are used to determine whether a trip undertaken by a worker is sufficiently connected to the worker's employment as to be a business trip. For example, if the trip is taken for the employer's benefit, on the instructions of the employer, or paid for by the employer, these are all factors that weigh in favour of finding that the trip is a business trip.

An employment connection generally exists continuously during a business trip, except where the worker makes a distinct departure of a personal nature.

This means that injuries or death that result from a hazard of the environment into which a worker has been put by the business trip, including hazards of any overnight accommodation itself, are generally considered to arise out of and in the course of a worker's employment. However, injuries or death resulting from a hazard introduced to the premises by the worker for the worker's personal benefit may not be considered to

arise out of and in the course of the worker's employment, if no other factors demonstrate an employment connection.

Personal activities associated with and incidental to business trips, such as traveling, eating in restaurants, staying in overnight accommodations (including sleeping, washing etc.) are normally regarded as within the scope of a worker's employment where a worker is on a business trip.

On the other hand, when a worker makes a distinct departure of a personal nature while on a business trip, this may be regarded as outside the scope of the worker's employment. There is an obvious intersection and overlap between employment and personal affairs while a worker is on a business trip. However, a "distinct departure" is more than a brief and incidental diversion.

If a worker simply stops for a short refreshment break, this may be regarded as a brief and incidental diversion from the business trip and an employment connection may still be found. The employment connection may be broken where the injury or death occurs as a result of the worker's involvement in social or recreational activities that are not incidental to the business trip.

In the marginal cases, it is impossible to do better than weigh the business trip features of the situation against the personal features to reach a conclusion as to whether the injury or death arises out of and in the course of a worker's employment.

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| **EFFECTIVE DATE:** | July 1, 2010 |
| **AUTHORITY:** | Section 134(1) of the *Act*. |
| **CROSS REFERENCES:** | Item C3-14.00, *Arising Out of and In the Course of a Worker's Employment*;<br>Item C3-18.00, *Personal Acts*;<br>Item C3-20.00, *Employer Provided Facilities*;<br>Item C3-22.10, *Compensable Consequences – Travel*, of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **HISTORY:** | June 1, 2024 − Housekeeping changes made to modernize terminology by removing gendered language.<br>April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.<br>July 1, 2010 − This policy resulted from the consolidation of former policy items #18.00, #18.01, #18.10, #18.11, #18.12, #18.20, #18.21, #18.22, #18.30, #18.31, #18.32, #18.33, #18.40, #18.41 and #18.42 of the *Rehabilitation Services & Claims Manual*, Volume II.<br>February 24, 2004 − Former policy item #18.31 was revised and applied to all decisions made on or after February 24, 2004, to clarify that compensation is provided to workers from leaving home until their return home, if the workers are required to make a special journey to the employer's premises or some other place where the job was to be done, |

because of an emergency or for some other reason, provided the workers do not deviate from their route.

**APPLICATION:** This Item applies to all claims for injuries occurring on or after July 1, 2010.

**RE: Worker-Owned Tools and Equipment** **ITEM: C3-19.10**

# BACKGROUND

## 1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation for personal injury or death sustained by a worker who provides their own tools or equipment for employment.

## 2. The Act

Section 134(1):

> If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.

# POLICY

The fact that a worker is required to provide their own tools or equipment for a job does not mean that carrying or transporting the tools or equipment to work or away from work is part of the worker's employment. In most instances, injuries or death associated with carrying or transporting tools or equipment to or from work as part of a worker's regular commute do not arise out of and in the course of a worker's employment.

The carrying or transporting of tools or equipment may be sufficiently connected to the worker's employment where the worker's travel is not a regular commute and:

- the worker is a traveling employee; or
- the worker is on a business trip.

In such cases, an injury or death that results may be considered to arise out of and in the course of a worker's employment.

**EFFECTIVE DATE:** July 1, 2010
**AUTHORITY:** Section 134(1) of the *Act*.

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| **CROSS REFERENCES:** | Item C3-14.00, *Arising Out of and In the Course of a Worker's Employment*;<br>Item C3-19.00, *Work-Related Travel*, of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **HISTORY:** | June 1, 2024 − Housekeeping changes made to modernize terminology by removing gendered language.<br>April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.<br>July 1, 2010 − This policy replaced former policy item #20.40 of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **APPLICATION:** | This Item applies to all claims for injuries occurring on or after July 1, 2010. |

In assessing these cases, the general factors listed under Item C3-14.00 are considered. Item C3-14.00 is the principal policy that provides guidance in deciding whether or not an injury or death arises out of and in the course of a worker's employment. All relevant factors must be considered and no single factor is determinative. Relevant factors not listed in policy may also be considered. The evidence is then weighed to determine whether the injury or death arose out of and in the course of the worker's employment. For decisions respecting the compensation or rehabilitation of a worker, the standard of proof applied under section 339(3) the *Act* is "at least as likely as not."

## A. Participation in Competitions

Subject to the general factors listed under Item C3-14.00, an injury or death sustained by a worker while participating in, or while traveling to or from, an employment-related competition (such as a first aid, mine rescue, or fire-fighting competition), is considered to arise out of and in the course of the worker's employment if all three of the following conditions are satisfied.

1. The type of skill or knowledge that the competition is designed to test or promote is connected to the worker's employment. It is not necessary that the worker function in the tested capacity regularly or on a full-time basis. It is sufficient if the worker functions in the capacity on a standby basis while having another regular job function (for example, a worker who also serves the role of first aid attendant at their workplace).

2. The worker is a participant in the competition, not merely a spectator. The worker is considered a participant if any of the following apply:

   (a) the worker is a participating or reserve member of a competing team;

   (b) the worker is a coach or trainer;

   (c) the worker is appointed or assigned to assist in the organization or administration of the event; or

   (d) the worker has job responsibilities relating to the skills being tested in the competition, or is training for such responsibilities, and is attending to improve the worker's skill or knowledge relating to those responsibilities.

3. The worker's participation in the competition is sponsored or requested in some way by the employer. If the employer has not specifically requested the worker to attend, this may be implied from the circumstances. For example, a request for the worker to attend may be implied if any of the following apply:

   (a) the worker is paid for the whole or any part of the period of participation;

   (b) the worker is paid for the whole or any part of the time spent in training for the event;

   (c) the employer makes some contribution towards the expenses of the worker for attending the event; or

   (d) the employer provides supplies or equipment for the worker's participation or training for the event.

An injury sustained by a worker while practising or training for a competition may arise out of and in the course of the worker's employment, as discussed in Section B below.

## B. Recreational, Exercise or Sports Activities

The organization of, or participation in, recreational, exercise or sports activities or physical exercises is not normally considered to be part of a worker's employment under the *Act*. There are, however, exceptional cases when such activities may be considered to have an employment connection. The obvious one is where the main job for which a worker is hired is to organize and participate in recreational activities. There may also be cases where, although the organization or participation in such activities is not the main function of the job, the circumstances are such that a particular activity can be said to be part of a worker's employment.

### i. Application of Item C3-14.00 Factors

The following provides guidance as to how some of the factors in Item C3-14.00 may be applied when considering specific cases relating to recreational, exercise or sports activities.

#### 1. Part of Job

Was the activity part of the job? If so, this is a factor that favours coverage. For example, a ski instructor injured while engaging in personal skiing activities unrelated to the instruction of pupils would not be covered. However, coverage may be provided if the skiing activity involved the instructor's pupils and was deemed part of the teaching activities.

### 2. Instructions from the Employer

Was the worker instructed or otherwise directed by the employer to carry out the exercise activity or to participate in the sports, exercise or recreational activity? For example, did the employer direct, request or demand that the worker participate in an activity as part of the worker's employment? The clearer the direction, the more likely this will favour coverage.

Was participation purely voluntary on the part of the worker? In some instances the employer may simply sanction participation without directing or requesting participation. If so, this is a factor that does not favour coverage.

### 3. During Working Hours

Did the recreational, exercise or sports activity occur during normal working hours? If so, this is a factor that favours coverage.

Where recreational, exercise or sports activities occur outside of normal working hours, including paid lunch breaks, this does not favour coverage. However, this factor does not automatically preclude coverage. For example, coverage may be extended where a teacher is injured while coaching or supervising a student soccer game in the schoolyard during their lunch break or after school.

Coverage under the *Act* cannot be extended by an employer simply by labeling an off-duty recreational, exercise or sport activity as mandatory.

### 4. Receipt of Payment or Other Consideration from the Employer

Was the worker paid a salary or other consideration while participating in the activity? The payment of salary favours coverage. If salary or other consideration was not paid, this does not favour coverage.

### 5. Supervision

Was the activity supervised by a representative of the employer having supervisory authority? If so, this favours coverage. If the activity was not supervised, this does not favour coverage.

### 6. On Employer's Premises

Did the activity take place on the employer's premises? If so, this is a factor favouring coverage.

Coverage is normally not extended to recreational, exercise or sports activities occurring off the employer's premises. However, coverage is not automatically precluded. Rather, a weighing of all relevant factors is required. For example,

coverage may be extended where a teacher is injured while supervising students during an off-site sports day during regular school hours organized by the employer.

### ii. Factors Unique to Recreational, Exercise or Sports Activities

In addition to the factors in Item C3-14.00, the following factors may also be considered in determining whether a recreational, exercise or sports-related injury or death arises out of and in the course of a worker's employment.

#### 1. Fitness a Job Requirement

Was physical fitness a requirement of the job? This factor is concerned with whether fitness is required in order to perform the job (e.g. muscle strength or aerobic capacity). If physical fitness is a requirement of the job, this is a factor favouring coverage.

Fitness training or exercise is more likely to be viewed as a job requirement where a significant degree of aerobic capacity or strength is needed to perform the job properly, but the work itself does not provide sufficient conditioning. This may be the case, for instance, for certain professionals such as police or firefighters, who may require the ability to react quickly to sudden and strenuous emergencies.

It is recognized that any recreation or exercise activity which adds to a worker's general health and enjoyment of life may be said to assist them in their work and, therefore, to benefit their employer. However, to cover these activities under the *Act* for that reason alone would obviously be to expand its horizons far beyond what the *Act* intended.

#### 2. Public Relations for Benefit of Employer

Was there an intention to foster good relations with the public, or a section of the public with which the worker deals? A worker may have been injured while engaged in a recreational, exercise or sport activity, on behalf of the employer, involving the public, or a section of the public, which was clearly designed to foster good community relations. If so, this is a factor favouring coverage.

## C. Educational or Training Courses

Compensation coverage does not generally extend to injuries or death that occur during educational or training courses. Such courses are generally for the worker's own benefit, and are not considered to have sufficient employment connection as to be compensable.

### i. Education Sufficiently Connected to the Employment

However, some types of educational or training courses may be sufficiently connected to the worker's employment as to be considered part of that employment. Consideration is then given to the factors in Item C3-14.00 and any other relevant

factors not listed in policy, and the evidence is weighed to determine whether the injury or death arose out of and in the course of the worker's employment.

Factors that may weigh in favour of coverage for injuries or death sustained during educational or training courses include whether the education or training:

- took place on the employer's premises;
- was for the benefit of the employer's business;
- was undertaken at the direction of the employer;
- involved using equipment supplied by the employer;
- was during a time period for which the worker was being paid;
- was paid for by the employer; or
- was considered by the employer to be part of the worker's job.

No single factor is determinative. In marginal cases, it is impossible to do better than weigh the employment features of the education or training against the personal features to reach a conclusion as to whether the test of employment connection has been met.

### ii. Education as Employment

In addition, there are three specific situations where the educational or training course is considered to be the worker's employment, and the question to be determined is whether the injury or death arose out of and in the course of the worker's education or training itself:

- Board-recognized vocational or training programs under section 6 of the *Act*.

- Vocational rehabilitation programs undertaken as part of a Board-approved rehabilitation plan (see Items C11-88.50 and C3-22.00).

- Pre-employment training or probationary work, undertaken by a person who is not under a contract of service or apprenticeship, that was specified by an employer as a preliminary to employment and which subjects the person to the hazards of an industry within the scope of the compensation provisions of the *Act*.

## D. Fundraising, Charitable or Other Similar Activities

The organization of, or participation in, fundraising or charitable activities is normally not considered to be part of a worker's employment under the *Act*. There are, however, certain cases when such activities may be considered sufficiently connected to the worker's employment as to be considered part of the worker's employment.

The factors listed in Item C3-14.00 are considered in determining whether coverage should be provided for an injury or death sustained during a fundraising or charitable activity. All relevant factors must be considered and no single factor is determinative. Relevant factors not listed in policy may also be considered.

The above guidance does not apply to persons who are employees of charitable or other like agencies which are covered under the *Act*, or to persons from other companies who are seconded for a period of time to work with such agencies and who are considered workers of those agencies under the *Act*.

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| **EFFECTIVE DATE:** | February 1, 2020 |
| **AUTHORITY:** | Section 134(1) of the *Act*. |
| **CROSS REFERENCES:** | Policy item #7.10, *Coverage for Volunteer Firefighters*;<br>Item C3-12.20, *Commencement and Termination of the Employment Relationship*;<br>Item C3-14.00, *Arising Out of and In the Course of a Worker's Employment*;<br>Item C11-88.50, *Vocational Rehabilitation – Formal Training*;<br>Policy item #115.30, *Experience Rating Cost Exclusions*, of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **HISTORY:** | June 1, 2024 − Housekeeping changes made to modernize terminology by removing gendered language.<br>October 21, 2020 − Housekeeping amendments to the *Act* portion of the Background section to reflect amendments to the *Act* by the *Workers Compensation Amendment Act*, *2020* (Bill 23 of 2020), in effect August 14, 2020.<br>April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.<br>February 1, 2020 – Policy amended to provide guidance on the legal issue of standard of proof.<br>July 1, 2010 – This policy resulted from the consolidation of former policy items #20.00, #20.10, #20.20, #20.30 and #20.50 of the *Rehabilitation Services & Claims Manual*, Volume II.<br>June 1, 2004 – Former policy item #20.20 was amended to clarify each of the factors listed in policy and to indicate which factors favour coverage. As part of the review of former policy item #20.20, former policy item #20.50 was also amended to clarify that fundraising or charitable activities are not normally considered to be part of a worker's employment, though in certain circumstances such activities may be covered; cross-reference former policy item #14.00; and delete discussion of the test in then section 5(1) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492. Changes to both former policies applied to all injuries on or after June 1, 2004. |
| **APPLICATION:** | Applies to all decisions made on or after February 1, 2020, respecting claims for injuries occurring on or after July 1, 2010. |

preferred in cases where the Board concludes that they will assist in the worker's early return to work. The Board may also consider these interventions where they will assist in preventing the onset of chronic pain.

In making this determination, the Board may consult with a Board Medical Advisor and/or a Board Psychologist. The worker's attending physician may also be consulted to confirm their agreement with the proposed intervention.

A multidisciplinary approach may include one or more of the following: medical management, physical conditioning, work conditioning, pain and stress management, ergonomic consultation, and vocational counseling and placement.

In determining what specific treatment or rehabilitation intervention is appropriate for a worker, the Board may refer the worker for a multidisciplinary assessment. A multidisciplinary assessment is an evaluation of the worker by a physician, a psychologist, a physiotherapist, an occupational therapist, or other provider as the Board determines appropriate.

A multidisciplinary assessment may involve consideration of the worker's medical history, health status, physical limitations, psychological state, behaviour, and workplace issues. The evaluation will provide an opinion on the treatment or rehabilitation intervention, or combination of interventions that would be appropriate to aid in the worker's recovery and return to work.

### iii. Early Intervention – Chronic Pain

In all cases where the Board considers that a worker may be experiencing chronic pain symptoms, a multidisciplinary assessment must be undertaken. This evaluation will provide an opinion on whether a worker is experiencing chronic pain as a consequence of a compensable injury. The evaluation will also provide an opinion on the appropriate course of treatment and rehabilitation for the worker.

## C. Compensation

Where a worker is participating in treatment and/or rehabilitation for temporarily disabling pain, a worker's entitlement to temporary wage-loss benefits may be considered under section 191 or 192 of the *Act*.

Where chronic pain is considered by the Board to become permanent, entitlement to permanent partial disability benefits is considered under sections 195 and 196 of the *Act*.

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| **EFFECTIVE DATE:** | January 1, 2021 |
| **AUTHORITY:** | Section 134(1) of the *Act*. |
| **CROSS REFERENCES:** | Item C3-14.00, *Arising Out of and In the Course of a Worker's Employment*;<br>Item C3-22.00, *Compensable Consequences*;<br>Item C3-22.30, *Compensable Consequences – Psychological Impairment*;<br>Chapter 5 – Wage-Loss Benefits;<br>Chapter 6 – Permanent Disability Benefits;<br>Item C6-39.10, *Chronic Pain*;<br>Chapter 11 – Vocational Rehabilitation;<br>Item C11-88.00, *Vocational Rehabilitation − Nature and Extent of Programs and Services*, of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **HISTORY:** | June 1, 2024 – Housekeeping changes made to modernize terminology by removing gendered language.<br>January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the *Workers Compensation Amendment Act, 2020* (Bill 23).<br>April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.<br>February 1, 2020 – Policy amended to provide guidance on the legal issues of standard of proof, evidence, and causation.<br>July 1, 2010 – This policy replaced former policy item #22.35 of the *Rehabilitation Services & Claims Manual*, Volume II.<br>January 1, 2003 − Former policy item #22.35 was created to set out the scope of coverage in cases where pain is accepted as compensable; applied to all new claims received and all active claims awaiting an initial adjudication of chronic pain on a claim. |
| **APPLICATION:** | Applies to all decisions, including appellate decisions, made on or after January 1, 2021, respecting claims for injuries occurring on or after July 1, 2010. |

**RE: Compensable Consequences – Certain Diseases and Conditions** **ITEM: C3-22.40**

# BACKGROUND

## 1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation for certain specific diseases or conditions that may be considered a compensable consequence of a worker's personal injury.

## 2. The Act

Section 134(1):

> If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.

# POLICY

Once it is established that an injury arose out of and in the course of a worker's employment, a disease or condition beyond the immediate physical damage caused by the compensable injury may also be considered to be a consequence of the compensable injury. If the compensable injury was of causative significance in the subsequent disease or condition, then the subsequent disease or condition is sufficiently connected to the worker's compensable injury as to be considered to arise out of and in the course of the worker's employment, and is therefore also compensable.

## A. Suicide

In a case of suicide, death benefits are payable if it is established that the suicide resulted from a compensable injury.

If the employment-related compensable injury was of causative significance in the suicide, then the suicide is sufficiently connected to the employment-related injury as to also be compensable. Consideration is given to the worker's mental health history and any evidence of causal connections between the employment-related injury and the suicide.

## B. Alcoholism and Drug Dependency Problems

Where it is claimed that an alcohol or drug dependency problem was caused or made worse by a compensable injury, the compensability of the alcohol or drug dependency problem is thoroughly investigated in the same manner as followed in investigating the relationship of other problems to an injury. Because of the psychological nature of alcohol and drug dependency problems, this investigation would normally include a reference to a Board Psychologist, though the decision on acceptability will be made by the Board officer adjudicating the claim. Any pre-existing alcohol or drug dependency problems are treated in the same way as any other pre-existing condition. The Board determines whether the worker's alcohol or drug dependency problem is a continuation of a pre-existing alcohol or drug dependency problem, or has resulted from or been made worse by the compensable injury.

If the Board accepts one alcohol or drug dependency problem as a compensable consequence of an injury, it does not mean the Board will accept all such problems. Any further or subsequent alcohol or drug dependency problem is investigated, following the procedure set out above. The Board determines whether the further alcohol or drug dependency problem is related to the compensable injury and the previously accepted alcohol or drug dependency problem, or to some pre-existing condition or other cause.

Policy regarding the prescription of narcotics and other drugs of addiction is set out in Item C10-80.00.

Compensation for alcoholism as an occupational disease is addressed in Section C. of Item C4-32.00.

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| **EFFECTIVE DATE:** | June 1, 2024 |
| **AUTHORITY:** | Section 134(1) of the *Act*. |
| **CROSS REFERENCES:** | Item C3-14.00, *Arising Out of and In the Course of a Worker's Employment*;<br>Item C3-16.00, *Pre-Existing Conditions or Diseases*;<br>Item C3-22.00, *Compensable Consequences*;<br>Item C3-22.30, *Compensable Consequences – Psychological Impairment*;<br>Item C4-32.00, *Other Matters* (Section C.i. Alcoholism);<br>Item C10-80.00, *Potentially Addictive Drugs*, of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **HISTORY:** | June 1, 2024 − This policy was revised to delete section B. Cancer.<br>April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.<br>February 1, 2020 – Policy amended to provide guidance on the legal issues of standard of proof, evidence, and causation. |

January 1, 2015 – Consequential amendments were made arising from changes to Chapter 10, *Health Care, Rehabilitation Services & Claims Manual*.
January 1, 2014 – This policy was revised to delete section B, Multiple Sclerosis.
July 1, 2010 – This policy resulted from the consolidation of former policy items #22.22, #22.30, #22.31, #22.32, and #22.34 of the *Rehabilitation Services & Claims Manual*, Volume II.
The criteria to be met before considering whether a cancer is traumatically induced set out in former policy item #22.32 was derived from J. Ewing's "Modern Attitude Toward Traumatic Cancer", *Archives of Pathology* 19:690-728, 1935. The statement that there is no causal relationship between bone cancer and trauma is based on the following four studies:
Coley, W.B.; *Neoplasms of Bone,* Paul Haber Inc., 2nd ed., 1960;
Dahlin, David C.; *Bone Tumours,* Charles C. Thomas, 3rd ed., 1978;
Monkman et al.; *Trauma and Oncogenesis,* Mayo Clinic Proceedings 49:157-163, March 1974; and
Pritchard et al.; *The Etiology of Osteosarcoma,* Clinical Orthopedics and Related Research, 111:14-22, September 1975

**APPLICATION:** Applies to all decisions made on or after June 1, 2024, respecting claims for injuries occurring on or after January 1, 2014.

- predominantly caused by a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment.

Section 135 of the *Act* sets out that a worker may be entitled to compensation for a mental disorder that does not result from an injury. This is distinct from a worker's entitlement under section 134(1) for psychological impairment that is a compensable consequence of an injury.

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 the evidence supporting different findings on an issue is evenly weighted, the issue is resolved in favour of the worker.

This standard of proof is different than medical or scientific standards of certainty. Therefore, the presence or absence of expert evidence supporting or opposing a causal link is relevant and will generally be given weight by the Board, but it is not determinative of causation; causation can be inferred from other evidence. In every case, the Board decides whether the evidence supports a finding of causation based on a weighing of the evidence.

The gathering and weighing of evidence generally is covered in policy items #97.00 through #97.70.

## A. Does the worker have a DSM diagnosed mental disorder?

Section 135 requires more than the normal reactions to traumatic events or significant work-related stressors, such as being dissatisfied with work, upset or experiencing distress, frustration, anxiety, sadness or worry as those terms are widely and informally used.

It requires that a worker's mental disorder be diagnosed by a psychiatrist or a psychologist as a condition that is described in the most recent DSM, at the time of diagnosis.

As set out in the DSM, a DSM diagnosis generally involves a comprehensive and systematic clinical assessment of the worker.

The Board is responsible for the decision-making process, and for reaching the conclusions on the claim. Under section 135(3) of the *Act*, the Board may obtain expert advice to review the diagnosis and where required, may obtain additional diagnostic assessment.

In reviewing the diagnosis, the Board also considers all of the relevant medical evidence, including prior medical history, attending physician reports and expert medical

opinion. The findings of this additional information are considered in determining whether there is a DSM diagnosed mental disorder.

**B. Was there one or more events, or a stressor, or a cumulative series of stressors?**

In all cases, the one or more events, stressor or cumulative series of stressors, must be identifiable.

**C. Was the event "traumatic" or the work-related stressor "significant"?**

All workers are exposed to normal pressures and tensions at work which are associated with the duties and interpersonal relations connected with the worker's employment.

The Board recognizes that workers may, due to the nature of their work, be exposed to traumatic events or significant stressors as part of their employment. An event may be traumatic or a stressor significant even though the worker has previous work-related exposure to traumatic events or significant stressors.

In determining whether the event is traumatic or the stressor is significant, the worker's subjective statements and response to the event or stressor are considered. However, this question is not determined solely by the worker's subjective belief about the event or stressor. It involves both a subjective and objective analysis.

For the purposes of this policy, a "traumatic" event is an emotionally shocking event. In most cases, the worker must have experienced or witnessed the traumatic event.

A work-related stressor is considered "significant" when it is excessive in intensity and/or duration from what is experienced in the normal pressures or tensions of a worker's employment.

Interpersonal conflicts between the worker and their supervisors, co-workers or customers are not generally considered significant unless the conflict results in behaviour that is considered threatening or abusive.

Examples of significant work-related stressors include exposure to workplace bullying or harassment.

**D. Causation**

(i) Was the mental disorder a reaction to one or more traumatic events arising out of and in the course of the worker's employment?

The *Act* requires that the mental disorder be a reaction to one or more traumatic events arising out of and in the course of the worker's employment. This requires the Board to determine the following:

**EFFECTIVE DATE:** February 1, 2020
**AUTHORITY:** Section 135 of the *Act.*
**CROSS REFERENCES:** Item C3-24.10, *Section 135(2) – Mental Disorder Presumption*;
Item C3-22.30, *Compensable Consequences – Psychological Impairment*;
Policy item #97.00, *Evidence*;
Policy item #97.10, *Evidence Evenly Weighted*;
Policy item #97.20, *Presumptions*;
Policy item #97.30, *Medical Evidence*;
Policy item #97.31, *Matter Requiring Medical Expertise*;
Policy item #97.32, *Statement of Worker about Own Condition*;
Policy item #97.33, *Statement by Lay Witness on Medical Question*;
Policy item #97.34, *Conflict of Medical Opinion*;
Policy item #97.35, *Termination of Benefits*;
Policy item #97.40, *Permanent Disability Benefits*;
Policy item #97.50, *Rumours and Hearsay*;
Policy item #97.60, *Lies*;
Policy item #97.70, *Surveillance*, of the *Rehabilitation Services & Claims Manual*, Volume II.

**HISTORY:**
June 1, 2024 – Housekeeping changes made to modernize terminology by removing gendered language.
October 21, 2020 – Housekeeping amendments to the *Act* portion of the Background section to reflect amendments to 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.
February 1, 2020 − Policy amended to provide guidance on the legal issues of standard of proof, evidence, and causation.
May 16, 2019 – the *Workers Compensation Amendment Act*, 2019 (Bill 18 of 2019) amended the definition of firefighter in sections 1 and 5.1 of the then *Workers Compensation Act*, R.S.B.C. 1996, c. 492.
March 1, 2019 − Consequential amendments arising from addition of policy item #97.70, *Surveillance* were made.
July 23, 2018 – Amendments to Item C3-13.00 were made to reflect changes to the *Act* resulting from the *Workers Compensation Amendment Act, 2018* (Bill 9 of 2018). Bill 9 came into force by Royal Assent on May 17, 2018; it added a mental disorder presumption to the then *Workers Compensation Act*, R.S.B.C. 1996, c. 492, for workers who are or have been employed in an eligible occupation, and revised the definition of firefighter in then section 5.1 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, to include firefighters employed by the government of Canada.
January 1, 2018 − Housekeeping changes were made to the definition of "psychologist" as amended by the *Act* effective November 2, 2017.
July 17, 2013 − Housekeeping changes were made to remove references to multi-axial diagnostic assessment in accordance with DSM-5.

July 1, 2012 – New Item C3-13.00, *Section 5.1 – Mental Disorders*, was added, to reflect changes to the *Act* resulting from the *Workers Compensation Amendment Act, 2011* (Bill 14 of 2011). This policy replaced former Item C3-13.00, *Mental Stress*, of the *Rehabilitation Services & Claims Manual*, Volume II, in its entirety. Former Item C3-13.00 had replaced former policy item #13.30 by putting it into the new format.
April 30, 2009 – Former policy item #13.30 was amended to delete references identified by the British Columbia Court of Appeal as being contrary to section 15(1) of the *Canadian Charter of Rights and Freedoms*.
April 1, 2007 – Former policy item #13.30 was amended to delete the paragraph requiring workers with a recurrence of mental stress to meet the requirements of then section 5.1, if their claims had initially been allowed prior to June 30, 2002.
December 31, 2003 – Former policy item #13.30 was amended to reflect the amendment of then section 5.1(1) of the *Act*, to include a reference to a psychologist's diagnosis of mental stress, and the introduction of then sections 5.1(2) to (4) of the *Act*. The amended policy applied to acute reactions to traumatic events that occurred on or after December 31, 2003. Former policy item #13.30 had been created on June 30, 2002 to set out the scope of coverage for mental stress claims. It applied to all injuries on or after June 30, 2002; permanent disabilities where the permanent disability first occurred on or after June 30, 2002, irrespective of the date of the injury; and recurrences, where the recurrence occurred on or after June 30, 2002, irrespective of the date of the injury.

**APPLICATION:** Applies to all decisions made on or after February 1, 2020, respecting claims that involve section 5.1 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 or section 135 of the *Act*, made on or after July 23, 2018.

# POLICY

## 1. Meaning of Dependant

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

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

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

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

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

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

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

## 2. Presumptions of Dependency

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

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

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

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

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| **EFFECTIVE DATE:** | December 31, 2003 |
| **AUTHORITY:** | Sections 1 and 165 of the *Act*. |
| **CROSS REFERENCES:** | Item C8-56.70, *Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit*, of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **HISTORY:** | June 1, 2024 − Housekeeping changes made to modernize terminology by removing gendered language.<br>April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.<br>March 1, 2012 − Housekeeping changes made in accordance with legislative amendments to the then *Act*.<br>November 24, 2011 − Housekeeping changes made in accordance with legislative amendments to the then *Act*.<br>March 22, 2004 – Typographical correction made, not intended to change substantive decision-making.<br>December 31, 2003 – This Item replaced policy items #54.00 and #54.10 of the *Rehabilitation Services & Claims Manual,* Volume II, to implement the legislative amendments contained in the *Skills Development and Labour Statutes Amendment Act*, 2003 (Bill 37 of 2003). |
| **APPLICATION:** | This Item applies to the death of a worker on or after December 31, 2003. |

parent to a child is found to have existed, it must be deemed to have continued unless and until there is evidence to the contrary.

### 3. Unborn Children

Under section 165 of the *Act*, a "child" includes a child who was not yet born at the date of the worker's death. To be considered an unborn child of the deceased worker, the child must have been conceived before the worker's death. If the pregnancy occurs after the worker's death, for instance through scientific intervention, the unborn child will not be considered a "child" of the deceased worker for the purposes of compensation under the *Act*.

Compensation payable in respect of an unborn child of a deceased worker commences from the date of death of the worker, and not from the date of the child's birth. If the child is stillborn, the provision set out in Item C8-57.00 applies as from the date of birth.

Under the Canada Pension Plan, a surviving spouse who is pregnant at the date of the worker's death receives a pension for the child from the first day of the month in which the child is born. The amount of workers' compensation payments will be adjusted when the child is born according to the Canada Pension Plan benefits then being received.

### 4. Children with a Physical or Mental Disability

A child of the deceased worker is entitled to compensation at any age in two situations:

- if, at the date of the worker's death, the child had a "physical or mental" disability that results in the child being "incapable of earning"; or

- if the child becomes "incapable of earning" because of a physical or mental disability before otherwise ceasing to be entitled to compensation.

In these cases, "incapable of earning" means the person is not physically or mentally capable of independently supporting themselves financially. A person who has a physical or mental disability, but is capable of independently supporting themselves financially does not satisfy this definition of "child" under the *Act*. A temporary physical or mental incapacity to earn is not sufficient to determine that a person is a "child" for the purpose of receiving compensation for the death of a worker.

### 5. Regularly Attends an Academic, Technical or Vocational Place of Education

This Item applies to a child who has reached 19 years of age, but is under 25 years of age, and who regularly attends an academic, technical or vocational place of education.

There is no requirement that attendance at the place of education must be full time or at a certain time of day. For instance, a child who works during the day may attend school at night. However, this is subject to the nature of the course being taken. If, for example, all that is being done by the child is attending a single course, one night per week, which may lead to a degree in 10 years or so, it might be difficult to conclude that the child was "regularly attending" a place of education.

Correspondence courses taken at home are not sufficient. The only possible exception might be if the period of home study is temporary and the child intends to return shortly to a place of education.

Apprenticeships do not qualify since they involve practical work in a work place as opposed to attending a place of education.

When a child reaches 19 years of age, the surviving spouse and/or the child are contacted with regard to plans for continuing education. If the child plans to continue education, the child is advised that compensation will be paid until 25 years of age, including summer months, as long as the child pursues the education.

Temporary absences from school will not cause a discontinuation of compensation payments as long as the Board is satisfied that there is a clear intention to eventually return to the educational program. In the absence of fraud or misrepresentation, no overpayment will be declared if the child, in fact, does not return to school.

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| **EFFECTIVE DATE:** | June 30, 2002 |
| **AUTHORITY:** | Sections 1 and 165(1) of the *Act.* |
| **CROSS REFERENCES:** | Item C8-57.00, *Compensation on the Death of a Worker – Recalculation of Compensation on a Change in Circumstances*;<br>Item C8-53.00, *Compensation on the Death of a Worker – Definitions – Meaning of Dependant and Presumptions of Dependency*;<br>Item C8-56.00, *Compensation on the Death of a Worker – Calculation of Compensation – Dependent Spouse with Children*;<br>Item C8-56.40, *Compensation on the Death of a Worker – Calculation of Compensation – Children*, of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **HISTORY:** | June 1, 2024 − Housekeeping changes made to modernize terminology by removing gendered language.<br>April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.<br>November 24, 2011 − Housekeeping amendments made in accordance with legislative amendments to the then *Act.*<br>June 30, 2002 – This Item replaced policy items #55.25, #58.10, #58.11, #58.12, #58.13, #58.14 of the *Rehabilitation Services & Claims Manual,* Volume II. |
| **APPLICATION:** | This Item applies to the death of a worker on or after June 30, 2002. |

court order or separation agreement will be followed provided they do not result in a higher amount of compensation than would be otherwise payable under sections 169 to 176 of the *Act* if there had been no separation.

It is irrelevant whether the worker was actually meeting their obligations under the court order or separation agreement at the date of death. However, if the worker was in arrears of support payments at the date of death, the Board will not pay compensation to cover the amount in arrears.

## 2. Calculation of Compensation – No Court Order or Separation Agreement

If, at the date of the worker's death, there was no court order or separation agreement in force providing payments for support of the dependent spouse, or children living with the spouse, the length of time during which the worker and spouse had been separated is considered as described below.

### 2.1 Separation of Three Months or Longer – No Court Order or Separation Agreement

If, at the date of death, the worker and dependent spouse had been separated for three or more months, the Board considers whether the parties intended to live separate and apart. The intention to live separate and apart is discussed below in Section 2.1.1 of this Item.

If it is found that, at the date of death, the parties did not intend to live separate and apart, section 178 of the *Act* does not apply and monthly payments are calculated as if there had been no separation.

If it is found that, at the date of death, the parties did intend to live separate and apart, monthly payments are based on the amount that the Board considers the spouse and children would have been likely to receive from the worker if the death had not occurred. However, compensation must not be greater than the compensation that would have been payable under sections 169 to 176 of the *Act* if there had been no separation.

#### 2.1.1 Determination of Intention of Living Separate and Apart

Whether the worker and dependent spouse were separated with the "intention" of living separate and apart requires an examination of all the circumstances to determine whether the geographical separation is consistent with the normal continuation of the marriage, or whether these circumstances bring into question the continued existence of the marriage. The presence or absence of this mental element concerning the status of the relationship should be assessed both on an objective and subjective basis, rather than being solely based on the subjective views of the parties to the marriage.

The question is whether, on the basis of all the evidence, the parties either treated the marriage as being at an end or, alternatively, whether it may be concluded on an objective basis that the marriage had no continuing existence.

It would be sufficient to support a conclusion that the parties were living separate and apart if one party (not necessarily both) treated the marriage as being at an end. Also, it could be concluded on an objective basis that the parties were living separate and apart, notwithstanding the subjective belief of both parties that the marriage was continuing. This might be the case if the separation was for an indefinite period and there was no reasonable prospect of their being reunited in the foreseeable future. It might be considered that they had at least reconciled themselves to this situation, notwithstanding the subjective continuance of the marriage relationship. On the other hand, if the parties viewed themselves as continuing in their marriage and intended to reunite, and it was considered that this would occur in the reasonably foreseeable future, then it might be concluded that they were not living separate and apart.

It would not normally be considered that the parties were living separate and apart in circumstances where a period of temporary separation was necessitated by the worker's employment.

### 2.2 Separation of Less than Three Months – No Court Order or Separation Agreement

If, at the date of death, the worker and dependent spouse had been living separate and apart for a period of less than 3 months, compensation is calculated under sections 169 to 176 of the *Act* [rules respecting specific compensation payment] as if there had been no separation.

## 3. Lump Sum Payment

The full amount of the lump sum provided for in Item C8-55.00 is payable to a dependent spouse, in Canada, who receives compensation under this Item.

## 4. Commencement of Compensation

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

## 5. Duration of Compensation

Compensation for a separated dependent spouse under this Item are for life, unless the terms of a court order or separation agreement specify otherwise. Where there is no court order or separation agreement, compensation for a separated dependent spouse under this Item are for life, unless the Board determines the worker would have provided payments for a lesser period of time.

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| **EFFECTIVE DATE:** | June 30, 2002 |
| **AUTHORITY:** | Section 178 of the *Act*. |
| **CROSS REFERENCES:** | Item C8-53.00, *Compensation on the Death of a Worker – Definitions – Meaning of "Dependant" and Presumptions of Dependency*;<br>Item C8-53.20, *Compensation on the Death of a Worker – Definitions – Meaning of "Child" or "Children"*;<br>Item C8-55.00, *Compensation on the Death of a Worker – Lump Sum Payment*;<br>Item C8-56.00, *Compensation on the Death of a Worker – Calculation of Compensation – Dependent Spouse with Children*;<br>Item C8-56.10, *Compensation on the Death of a Worker – Calculation of Compensation – Dependent Spouse with No Children*;<br>Item C8-56.30, *Compensation on the Death of a Worker – Calculation of Compensation – Common Law Relationships*;<br>Item C8-56.40, *Compensation on the Death of a Worker – Calculation of Compensation – Children*;<br>Item C8-56.70, *Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit*, of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **HISTORY:** | June 1, 2024 − Housekeeping changes made to modernize terminology by removing gendered language.<br>April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.<br>June 30, 2002 − Replaced policy item #55.40 of the *Rehabilitation Services & Claims Manual,* Volume II. |
| **APPLICATION:** | This Item applies to the death of a worker on or after June 30, 2002. |

| RE: | Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit | ITEM: | C8-56.70 |
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# BACKGROUND

## 1. Explanatory Notes

This policy describes how compensation as a result of a worker's death is calculated for a person who, although not dependent on the worker's earnings at the time of the worker's death, had a reasonable expectation of pecuniary benefit from the worker.

## 2. The Act

Section 1, in part:

> **"dependant"** – See Item C8-53.00.

Section 175:

> (1) This section applies if
>
> (a) either
>
> (i) no compensation is payable under sections 169 to 174 in relation to a deceased worker, or
>
> (ii) the compensation is payable under those sections only to a spouse, a child or children or a parent or parents of the worker, and
>
> (b) the worker leaves a spouse, a child or children or a parent or parents who, although not dependent on the worker's earnings at the time of the worker's death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker.
>
> (2) At the discretion of the Board, payments may be made to persons referred to in subsection (1)(b), but not to more than one of the categories of persons referred to in that provision.
>
> (3) As a restriction on subsection (2), the total of the amounts paid under this section must not be greater than $762.83 per month for life or for a lesser period determined by the Board.

# POLICY

## 1. Persons with a Reasonable Expectation of Pecuniary Benefit

This Item applies if

(a) no compensation is payable to a dependant of the deceased, or

(b) the compensation is payable only to a spouse, a child or children, or a parent or parents,

but the worker leaves a spouse, child or children, or a parent or parents who, although not dependent on the worker's earnings at the time of the worker's death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker.

A reasonable expectation of pecuniary benefit requires more than an assumption that the person would have received a financial benefit from the worker if the worker had not died. The evidence must support a finding that the worker would have provided an actual monetary benefit to the spouse, child or parent if the worker had not died.

Compensation may be payable to persons with a reasonable expectation of pecuniary benefit in only one of the following categories:

(a) spouse of the deceased worker;

(b) child or children of the deceased worker; or

(c) parent or parents of the deceased worker.

An application for compensation from a spouse, child or parent, on the grounds that they are a dependant of the deceased worker will automatically be considered under this Item if the Board concludes that the person was not wholly or partly dependent on the worker's earnings at the time of the worker's death.

## 2. Calculation of Compensation

Compensation under this Item is determined at the Board's discretion. However, monthly payments must not be greater than the following amount:

| | | | |
|---|---|---|---|
| January 1, 2023 | — | December 31, 2023 | $739.74 |
| January 1, 2024 | — | December 31, 2024 | $762.83 |

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

## 3. Commencement of Compensation

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

## 4. Duration of Compensation

Compensation under this Item may be for life or for a lesser period as determined by the Board. For instance, before death, the worker may have given a promissory note to a parent, undertaking to repay a loan with interest. In such a situation, the Board would not provide compensation for life because the parent's expectation of pecuniary benefit would not have been a lifelong expectation.

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| **EFFECTIVE DATE:** | February 1, 2020 |
| **AUTHORITY:** | Section 175 of the *Act*. |
| **CROSS REFERENCES:** | Item C8-53.00, *Compensation on the Death of a Worker – Definitions – Meaning of "Dependant" and Presumptions of Dependency*;<br>Item C8-53.20, *Compensation on the Death of a Worker – Definitions – Meaning of "Child" or "Children"*, of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **HISTORY:** | June 1, 2024 − Housekeeping changes made to modernize terminology by removing gendered language.<br>April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.<br>February 1, 2020 – Policy amended to provide guidance on the legal issues of standard of proof and evidence.<br>December 31, 2003 − Replaced policy item #60.00 of the *Rehabilitation Services & Claims Manual,* Volume II. |
| **APPLICATION:** | Applies to all decisions made on or after February 1, 2020, respecting the death of a worker on or after December 31, 2003. |

In determining whether the Board will deduct a business expense or a cost associated with equipment from a worker's gross earnings, the Board considers the following questions as appropriate:

1) Did the worker's gross earnings for the time period under review include payment in respect of the expense?

2) Did the worker incur the expense directly as a result of supplying equipment and/or materials to the employer?

3) Did the expense result from the worker operating the worker's business?

4) Would the worker incur the expense regardless of the nature of the employment?

To calculate the amount the Board will deduct as an expense for equipment depreciation, the worker will be asked to provide the purchase price for any equipment that is a required component of the contract of service. The purchase price of such equipment is usually the invoiced value of the asset(s), including applicable taxes. Where a worker trades in another asset in order to purchase a new asset, the trade does not reduce the value of the acquired asset for the purposes of determining the purchase price.

The capital cost allowance or depreciation amount for equipment that is a required component of the contract of service will be deducted from gross earnings where it does not exceed 15 percent of the purchase price of the equipment.

Where the capital cost allowance or depreciation amount exceeds15 percent of the purchase price, 15 percent of the purchase price will be deducted from gross earnings instead of the capital cost allowance or depreciation amount.

Where the worker does not declare a capital cost allowance or a depreciation amount for equipment that is a required component of the contract of service, the Board will not make a deduction for equipment depreciation from gross earnings for that equipment.

Interest accrued (whether paid or not) as the result of debt in respect of equipment owned by a worker that is a required component of the contract of service is considered a business expense. The accrued interest is deducted from gross income.

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| **EFFECTIVE DATE:** | August 1, 2006 |
| **HISTORY:** | April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. |
| **APPLICATION:** | The revised policy applies to injuries that occur on or after August 1, 2006. |

## *#68.62 Fishers*

Generally, where a fisher may deduct business expenses and/or costs associated with equipment from the fisher's earnings for business or tax purposes, this suggests that the fisher's earnings include payment in respect of such costs. In calculating the earnings of a fisher who, for business or taxation purposes, deducts business expenses and/or costs associated with equipment, the Board decides which costs and/or expenses will be deducted from gross earnings to determine the labour component of the fisher's gross earnings. This policy does not apply to a fisher receiving separate special expense reimbursements or allowances from an employer; the Board considers such payments under policy item #68.23.

In determining whether the Board will deduct a business expense or a cost associated with equipment from a fisher's gross earnings, the Board considers the following questions as appropriate:

1) Did the fisher's gross earnings for the time period under review include payment in respect of the expense?

2) Did the fisher incur the expense directly as a result of supplying equipment and/or materials for fishing activities?

3) Did the expense result from the fisher operating their business?

4) Would the fisher incur the expense regardless of the nature of the employment?

To calculate the amount the Board will deduct as an expense for equipment depreciation, the fisher will be asked to list the purchase price of the vessel or the other equipment used to harvest fish. The purchase price of a vessel or equipment used to harvest fish is the invoiced value of the asset(s), including applicable taxes. Where a fisher trades in an equipment asset in order to purchase a new equipment asset, the trade does not reduce the value of the acquired equipment asset for the purposes of determining the purchase price.

The capital cost allowance or depreciation amount for a vessel or equipment used to harvest fish will be deducted from gross earnings where it does not exceed 15 percent of the purchase price of the equipment.

Where the capital cost allowance or depreciation amount exceeds 15 percent of the purchase price, 15 percent of the purchase price will be deducted from gross earnings instead of the capital cost allowance or depreciation amount.

Where the fisher does not take a capital cost allowance or a depreciation amount for a vessel or equipment used to harvest fish, the Board will not perform a deduction for equipment depreciation from gross earnings for that equipment.

Interest accrued (whether paid or not) as the result of debt in respect of a fishing vessel used and owned by a commercial fisher is considered a business expense. The accrued interest is deducted from gross income.

The purchase of food as a business expense is not deducted from gross income as it is considered a direct benefit to the fisher and is a measurable return from the activities of fishing. The costs of maintenance for the vessel or other equipment used to harvest fish, fuel, fishing nets, and other appropriate costs are deducted from gross income as costs associated with equipment. See also policy item #65.03.

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| **EFFECTIVE DATE:** | August 1, 2006 |
| **HISTORY:** | June 1, 2024 − Housekeeping changes made to modernize terminology by removing gendered language.<br>April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. |
| **APPLICATION:** | The revised policy applies to injuries that occur on or after August 1, 2006. |

## #68.70 Payments to Substitutes

A worker may be partially able to perform the normal work or work full-time at other types of work, but pay a substitute to carry out jobs which the worker is unable to do. Wage-loss benefits will still be paid in respect of the payment to the substitute but only to the extent of the difference between the value of the work being performed by the worker and the lesser of the worker's average net earnings and the statutory maximum. Where the value of that work exceeds the worker's average net earnings or the statutory maximum, no wage-loss benefits are paid.

Where the worker is a principal of a limited company, the amount paid to a substitute may be one indication of the principal's pre-injury earnings level if these earnings are not otherwise clearly ascertainable because, for example, earnings have consisted of sporadic withdrawals from the income or profits of the corporation. If the principal continues to work in the business after the injury while employing a substitute to carry on part of the pre-injury functions, the amount paid to the substitute may, in comparison with the pre-injury earnings, be a factor in computing the value of the principal's post-injury work. Regard would, however, also have to be had to the nature and extent of the principal's activities after the injury compared with before the injury and the continued income received from the business after allowing for the costs of operation.

Where a worker has personal optional protection, wage-loss benefits are calculated without regard to the fact that the worker is employing a substitute to do all the pre-injury work.

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

## #68.80 Government Sponsored Work Programs

A variety of payment systems are currently in use for work programs, such as:

1. The simple continuation of Employment Insurance, Welfare or other benefits.

2. A “top-up” of Employment Insurance, Welfare or other benefits.

3. Full payment by the employer, subsidized either in whole or in part from Employment Insurance, Welfare or other government funds.

In cases of this type, the composition of average earnings is made up of the total dollar amount being paid to the worker either by the employer or the sponsoring government agency or a combination of either.

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

## #68.90 Principals – Composition of Earnings

The *Assessment Manual* sets out who may be a principal, and criteria for determining whether a principal is a worker. Principals’ average earnings are calculated based on earnings from employment, including earnings shown on official statements issued by the firm for income tax purposes and management fees. When determining the composition of a principal’s average earnings, the Board may consider dividends and the repayment of a principal's loan to the employer as earnings in cases where it is shown that the amount received by the principal represents payment for the principal’s labour.

If reported earnings are being received by a principal’s spouse or child, then it should normally be considered for compensation purposes that the earnings belong to the spouse or child and not the principal. The same applies if information of this nature has been provided on Income Tax Reports.

In making reports of this nature for Income Tax purposes, the company is asserting that the principal’s spouse or child did work in the business and did earn the money paid. The Board is required to consider any evidence which may show that this assertion is incorrect and to make its own determination. However, the Board is entitled to rely upon this assertion unless there is evidence to the contrary. Even if, upon investigation, the evidence shows that the spouse or child did not work for the company, that in itself does not mean that the payments to the spouse or child were earnings of the principal. There could be any number of other reasons why the company might make payments to the spouse or child.

fee schedules, to provide health care to injured workers, such as acupuncturists, audiologists, community health workers, denturists, dietitians, massage therapists, nurses other than nurse practitioners, occupational therapists, opticians, optometrists, pharmacists, physiotherapists, prosthetists and orthotists, psychologists, and other mental health care providers.

"Residence" means the place where a worker lives or regularly stays. Where the worker has more than one residence, the worker is required to identify one as the primary residence.

## 2. GENERAL PRINCIPLES

### 2.1 Objectives

The Board's objective is to provide reasonably necessary health care to cure or alleviate the effects of a compensable personal injury, occupational disease or mental disorder. In order to meet this objective, the Board aims to:

- facilitate the timely delivery of treatment;
- ensure that health care provided is appropriate and safe;
- ensure that injured workers receive quality care and services from physicians, qualified practitioners and other recognized health care professionals;
- work collaboratively with injured workers and their physicians, qualified practitioners and other recognized health care professionals in the development of treatment and rehabilitation plans;
- promote safe and early recovery and return to work;
- balance the individual needs of injured workers and the need to ensure the financial integrity of the workers' compensation system;
- support the long-term health care needs of severely disabled workers; and
- ensure that the health care provided is supported by up-to-date scientific evidence and information.

### 2.2 Duration of Entitlement to Health Care

On accepted personal injury and mental disorder claims, entitlement to health care begins on the date of injury. On accepted occupational disease claims, entitlement to health care begins on the date the worker first seeks treatment by a physician, qualified practitioner or other recognized health care professional.

Health care continues for as long as the Board considers it reasonably necessary with respect to the worker's compensable personal injury, occupational disease or mental disorder. In making this decision, the Board may consider medical opinion or other expert professional advice.

Health care may continue even if the worker is not disabled from earning full wages at the work at which they are employed, or is retired from the workforce.

Health care may be provided before the Board determines a worker's entitlement to compensation, if the Board is satisfied that medical evidence indicates that without health care, the worker is at risk of significant deterioration in health.

## 2.3 When a Worker Leaves British Columbia

Workers who reside in British Columbia on the date of injury and subsequently wish to leave British Columbia, either temporarily or permanently, are required to discuss the potential health care ramifications with the Board. If leaving British Columbia might impede the worker's recovery, compensation may be suspended if the circumstances set out in Item C10-74.00 are met.

The Board does not generally pay in excess of British Columbia rates for health care rendered outside British Columbia to a worker who has voluntarily left British Columbia.

## 2.4 When a Worker Retires

The Board assesses the health care needs of workers with permanent total disabilities during the three month period before their retirement benefits are payable.

In assessing a permanently totally disabled worker, the Board focuses on the health care benefits, services and personal supports that the worker will need or continue to need, after retirement.

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| **EFFECTIVE DATE:** | October 21, 2020 |
| **AUTHORITY:** | Sections 1, 134, 136, 156, and 162 of the *Act*. |
| **CROSS REFERENCES:** | Item C4-26.00, *"Date of Injury" For Occupational Disease*;<br>Item C10-74.00, *Reduction or Suspension of Compensation*;<br>Item C10-75.10, *Health Care Accounts – Health Care Provided Out-of-Province*;<br>Chapter 18 – Retirement Benefits, of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **HISTORY:** | June 1, 2024 − Housekeeping changes made to modernize terminology by removing gendered language.<br>October 21, 2020 – Amended to reflect amendment to the health care provisions 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.
January 1, 2015 – Policy amended to include nurse practitioners as qualified practitioners in accordance with changes to the *Act* resulting from the *Miscellaneous Statutes Amendment Act, 2014*, of 2014, Bill 17.
Policy also consolidated and replaced former policy items #72.00, #73.00, #73.01, #73.20, #73.40 and #73.54 of the *Rehabilitation Services & Claims Manual*, Volume II.

**APPLICATION:** Applies on or after October 21, 2020.

# POLICY

## 1. GENERAL

Health care provided to injured workers is at all times subject to the direction, supervision, and control of the Board.

The Board determines all questions as to the necessity, character, and sufficiency of health care to be provided for injured workers. When making this determination, the Board may seek medical opinions or other expert professional advice to assist in determining if a given health care benefit or service is reasonably necessary.

The control of health care by the Board is not intended to exclude injured workers' choices. The Board uses its control over health care to do such things as ensure that health care options are not overlooked, promote recovery, facilitate return to work, and exclude choices by injured workers, physicians, qualified practitioners and/or other recognized health care professionals that will delay recovery, involve unnecessary or ineffective treatment, or create an unwarranted risk of further injury, increased disablement, disease or death. If there are reasonable choices of treatment, or reasonable differences of opinion among the medical profession with regard to the preferable treatment, or choices to be made that depend on personal preferences, the matter should be regarded as one of patient choice.

The Board's exercise of control relates largely to the approval or denial of health care payments, but can also include such things as directing an injured worker to be examined by a specialist or to attend a particular health care facility.

Where the Board considers health care to be reasonably necessary, and more than one type is available, the Board determines whether the choices are equally effective in terms of expected outcomes and length of disability, and are of a similar cost.

If there is a substantial difference in costs of equally effective health care options, the Board normally authorizes the option that is expected to be the least costly. In such cases, if the physician, qualified practitioner, other recognized health care professional, and/or worker chooses the more costly option, the Board pays for costs up to the amount that would have been paid for the authorized health care option.

If there is no substantial difference in costs between equally effective health care options, the choice is left to the worker.

If a worker travels outside British Columbia, and wishes to obtain health care the Board otherwise considers to be reasonably necessary, the worker should be advised that the Board will generally not pay in excess of the rates paid for medical treatment in British Columbia.

Generally, the Board does not pay for health care that is new, non-standard or not generally accepted by the Board, unless prior approval has been obtained.

## 2. SELECTION OF A PHYSICIAN OR QUALIFIED PRACTITIONER

Subject to the Board's overriding supervisory power, the worker may select the worker's own physician or qualified practitioner. For the purpose of sections 156, 157, 158, 159, 160, and 161 of the *Act*, there is no distinction between a physician and a qualified practitioner.

Where a worker wishes to make a change of physician or qualified practitioner, the following guidelines apply:

(a) Where a worker moves residence, a new physician or qualified practitioner may be selected in the new community without prior permission from the Board.

(b) Where a worker receives emergency treatment from a physician who is not the family physician, the worker may transfer to the family physician without prior permission from the Board.

(c) Where a worker wishes to change physician or qualified practitioner because of a loss of rapport with them, or because of a preference for a type of treatment available from a different type of physician or qualified practitioner, the change will be permitted unless the Board concludes that it is likely to be harmful, or medically unsound by reason of the circumstances relating to that particular case.

(d) Where a worker makes multiple changes of physicians or qualified practitioners and it appears to the Board that the worker is looking to find the physician or qualified practitioner whom the worker thinks is likely to provide a more favourable report, the Board may deny the change, and may not pay for treatment from the new physician or qualified practitioner. In determining whether to approve and pay for treatment from the worker's change of physician or qualified practitioner, the Board considers whether a rational treatment program is being followed.

(e) Where a worker attends walk-in clinics instead of, or in addition to, having a family physician and therefore does not see the same physician, the Board does not deny a worker's change of physician on this basis alone.

If the Board concludes that a worker's choice of physician or qualified practitioner is harmful or unsound, the decision is communicated to all physicians and qualified practitioners concerned, as well as to the worker. In these circumstances, the Board may reduce or suspend compensation if the circumstances in Item C10-74.00 are met.

Where a worker attends a physician or qualified practitioner whose right to render health care has been cancelled or suspended by the Board under the provisions referred to in policy item #95.30, the Board will not pay for the treatment or services rendered.

## 3. CONCURRENT TREATMENT

Concurrent treatment occurs when a worker's treatment is overseen by more than one physician or qualified practitioner at a time.

The Board's general position is that a worker's treatment should be overseen by only one physician or qualified practitioner at a time.

There are cases, however, where the Board may consider concurrent treatment to be reasonable.

The Board may consider concurrent treatment reasonable in situations such as when a worker's disability requires treatment by a physician and a specialist, by two or more specialists, or by a qualified practitioner with concurrent monitoring by a physician. The Board may also consider concurrent treatment reasonable when a worker is transitioning from one form of treatment to another. In this instance, the Board may determine that it is warranted for the treatments to overlap for a limited time.

The Board does not refuse concurrent treatment simply because it is inconsistent with a rule or policy of a professional organization.

## 4. AUTHORIZATION OF ELECTIVE SURGERY

Elective surgery is considered optional or not urgently necessary surgical treatment.

The Board does not expect physicians or qualified practitioners working under emergency conditions to obtain prior authorization from the Board before performing necessary surgical treatments. However, the Board does not generally pay for any elective surgical treatments unless prior authorization from the Board has been obtained.

The Board determines whether to authorize elective surgery based on the applicable medical evidence. The Board may refuse to authorize an elective surgical treatment if the Board considers it to be:

- unduly hazardous, having regard to its potential benefits and the risks involved in not having the surgery;
- unlikely to promote recovery;
- unnecessary; or

- reasonable to try less invasive measures first.

Before the Board refuses authorization of an elective surgical treatment, the Board normally discusses this decision with the worker's physician or qualified practitioner. The Board notifies the worker and the worker's physician or qualified practitioner of its decision.

If the worker decides to proceed with the unauthorized elective surgical treatment, the Board does not pay for the treatment or any expenses associated with recovery from that treatment. As well, the Board may consider the worker to have engaged in an unsanitary or injurious practice, and may reduce or suspend the worker's compensation, if the circumstances in Item C10-74.00 are met.

## 5. EXAMINATIONS

An injured worker's physician, qualified practitioner or other recognized health care professional may request that the Board conduct a medical examination of the injured worker. Similarly, the Board may direct an injured worker to submit to a medical examination.

A "medical examination" is not limited to examinations performed by physicians. It also includes examinations by qualified practitioners and other recognized health care professionals. The term "examination" may include a consultation (e.g. with a dentist), or an assessment (e.g. by a psychologist).

A Board-directed medical examination may be conducted by the worker's own physician, the Board or an external physician, qualified practitioner or other recognized health care professional, as determined by the Board.

In all cases, the Board notifies the injured worker in advance of the type of physician, qualified practitioner or other recognized health care professional who will conduct the examination. The Board also notifies the injured worker's physician, qualified practitioner, or other recognized health care professional of its intention to proceed with a Board-directed medical examination.

Following a Board-directed medical examination, the Board notifies the worker's physician, qualified practitioner or other recognized health care professional of those medical matters that should be brought to their attention following the examination.

**EFFECTIVE DATE:** January 1, 2024
**AUTHORITY:** Sections 1, 154, 156, 157, 158, and 160 of the *Act.*

**CROSS REFERENCES:**

Item C3-22.00, *Compensable Consequences*;
Item C10-74.00, *Reduction or Suspension of Compensation*;
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*;
Item C10-79.00, *Health Care Supplies and Equipment*;
Item C10-84.00, *Additional Benefits for Severely Disabled Workers*;
Policy item #95.30, *Failure to Report*;
Policy item #97.30, *Medical Evidence*;
Policy item #97.34, *Conflict of Medical Opinion*, of the *Rehabilitation Services & Claims Manual*, Volume II.

**HISTORY:**

June 1, 2024 − Housekeeping changes made to modernize terminology by removing gendered language.
January 1, 2024 – Reorganization of policy direction from former policy item #34.51 into this Item, consequential to the reformatting and renumbering of policies in Chapter 5, *Wage-Loss Benefits and Return to Work Obligations*.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
January 1, 2015 − This policy consolidated and replaced former policy items #74.23, #74.25, #74.50, #74.60, #78.00, #78.10, #78.11, #78.20 and #78.21 of the *Rehabilitation Services & Claims Manual,* Volume II.
June 1, 2009 – deleted references to Board officer, Board Medical Advisors, Medical Advisor, and Medical Advisor/Consultant.

**APPLICATION:**

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

### 1.2 Reinstatement of Compensation

Generally, when compensation is reinstated following a period of reduction or suspension, it is reinstated prospectively from the date of the Board's decision to reinstate. If the Board's decision to reduce or suspend compensation includes the reduction or suspension of the worker's right to health care, the Board does not pay health care accounts that are incurred during the period of the reduction or suspension.

If the worker provides a reasonable explanation for the conduct that resulted in the reduction or suspension, the Board may reinstate the compensation retroactively to the date it was reduced or suspended. In this case, the Board may pay any outstanding health care accounts incurred during the period of the reduction or suspension.

If a worker's temporary disability stabilizes as a permanent impairment while compensation is reduced or suspended, the effective date of the resulting permanent disability benefit is the date on which the worker's temporary disability stabilized as a permanent impairment, not the day following the date of reduction or suspension of compensation.

## 2. FAILURE TO ATTEND OR OBSTRUCTION OF A MEDICAL EXAMINATION

Section 154(2) of the *Act* suspends a worker's right to compensation on a claim if the worker fails to attend an examination or obstructs a medical examiner. The worker's right to compensation on the claim is suspended until the examination that the worker failed to attend or obstructed has taken place and been effectively completed.

In applying this section of the *Act*, the Board does not limit the terms "medical examination" to examinations performed by physicians or "medical examiner" to physicians. It also includes examinations by qualified practitioners and other recognized health care professionals. The term "examination" may include a consultation (e.g. with a dentist), or an assessment (e.g. by a psychologist).

In determining whether a worker has failed to attend a medical examination, the Board considers whether the worker:

- has received notice of the date, time and place of the appointment;
- did not attend; and
- did not give adequate notice that they would not be attending.

In determining whether a worker has obstructed a medical examiner, the Board considers whether the worker behaved in a manner that prevented the examination from being effectively completed.

Before the Board suspends a worker's compensation for failing to attend an examination or obstructing a medical examiner, the Board takes the following actions:

(a) The Board determines whether the worker has failed to attend an examination or has obstructed a medical examiner.

(b) If the Board determines the worker has failed to attend an examination or has obstructed a medical examiner, the Board then advises the worker that all compensation on the claim will be suspended if the examination is not effectively completed and attempts to reschedule the examination.

(c) If the worker fails to reschedule or continues to avoid or obstruct the examination, the Board gives the worker an opportunity to provide an explanation for the worker's conduct.

(d) If the Board does not consider the worker's explanation to be reasonable, the Board suspends the worker's compensation on the claim.

When the Board notifies the worker of its decision to suspend compensation under section 154(2) of the *Act*, the Board includes notice of a further appointment for the examination, and advises that, if the worker attends and allows the examination to be effectively completed, compensation will be reinstated.

## 3. PERSISTING IN UNSANITARY OR INJURIOUS PRACTICES

The Board has discretion under section 154(3)(a) of the *Act* to determine whether and how a worker's compensation may be affected by the worker's persistence in unsanitary or injurious practices that tend to imperil or delay the worker's recovery. The Board may reduce the worker's compensation, suspend the worker's compensation or continue with the worker's compensation.

If the Board chooses to reduce the worker's compensation, the Board has the further discretion to determine whether the reduction of the compensation means suspending the health care on that claim or just suspending the wage-loss benefits or permanent disability benefits payment on that claim.

Before the Board reduces or suspends a worker's compensation for persisting in unsanitary or injurious practices, the Board takes the following actions:

(a) The Board determines whether the worker is engaging in an unsanitary or injurious practice that tends to imperil or delay the worker's recovery, taking medical opinion or other expert professional advice into consideration as necessary.

**HISTORY:**

June 1, 2024 − Housekeeping changes made to modernize terminology by removing gendered language.
April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
January 1, 2015 − This policy incorporated concepts from former policy item #73.30, and consolidated and replaced former policy items #78.12, #78.13, and #78.24 of the *Rehabilitation Services & Claims Manual*, Volume II.
June 1, 2009 – Deleted references to Board officer and Medical Advisor from former policy items.

**APPLICATION:**

This Item applies on or after January 1, 2015.

Where the Board considers certain health care to be reasonably necessary, and more than one type is appropriate and available, but there is a substantial difference in costs, the Board normally only authorizes and pays for costs up to the amount that would have been paid for the less expensive but equally effective option.

Physicians, qualified practitioners and other recognized health care professionals are not permitted to bill a worker for any amount in excess of the amount payable by the Board. If they do so and the worker pays, the Board reimburses the worker for the excess amount and may recover that amount by deducting it from future health care accounts that the physician, qualified practitioner or other recognized health care professional submits to the Board. It is recommended, however, that workers contact the Board for information on the amount payable by the Board before obtaining non-emergency health care.

A physician, qualified practitioner or other recognized health care professional may choose to see a worker in a health care facility other than their own office. In such cases, the Board only pays for the services of the physician, qualified practitioner or other recognized health care professional and does not pay any additional fees for use of the health care facility. This would apply, for example, if a physician chooses to see a worker at a hospital rather than their office.

## 4. ADMINISTRATION OF HEALTH CARE ACCOUNTS

### 4.1 Before Initial Claims Adjudication

Generally, the Board only pays health care accounts after the worker's claim for personal injury, occupational disease or mental disorder is allowed. However, the Board may pay health care accounts submitted before a claim is initially adjudicated where:

- the health care provided is emergency health care necessary to optimize recovery (e.g. emergency surgery);
- the health care provided is necessary to assist in the adjudicative process. This includes reporting or form fees, and fees for any Board-directed examination, consultation or assessment undertaken on an investigative basis; or
- the Board is satisfied that medical evidence indicates that without health care the worker is at risk of a significant deterioration in health.

Unless pre-authorized, the Board does not generally pay health care accounts in respect of investigative surgery because such invasive procedures could result in a disability. If a worker chooses to pay for and undergo investigative surgery, the Board may consider any resultant reports in adjudicating the worker's claim. If the claim is

subsequently allowed, the Board may then pay the health care account for the investigative surgery.

If a worker's claim for personal injury, occupational disease or mental disorder is not allowed, the Board does not pay wage-loss benefits for the period prior to the date of the decision, even though the Board may have paid for certain health care expenses during that period.

## 4.2 Allowed Claims

### 4.2.1 General

When a claim for personal injury, occupational disease or mental disorder is allowed on initial adjudication, reconsideration, review or appeal, the Board does not solicit health care accounts for health care provided before the date of the decision to allow the claim. However, if the Board receives such health care accounts, and the decision allowing the claim does not deal with the question of entitlement to the health care at issue, the Board administers the health care accounts as if the claim had been allowed as of the date of injury.

The Board may reimburse a worker where the worker has received and paid for health care in good faith and on the advice of a physician, qualified practitioner or other recognized health care professional, even though the health care might not ordinarily be approved for the worker's compensable personal injury, occupational disease or mental disorder.

### 4.2.2 Compensable Disability Resolved

Generally, the Board does not pay health care accounts for health care provided after the date of the Board's decision that the compensable disability has resolved, unless the health care accounts are submitted promptly and in good faith in respect of reporting or form fees, or Board-directed examinations, consultations or assessments.

### 4.2.3 Entitlement to Treatment Limited

After a worker's claim is allowed, the Board may decide to limit a worker's entitlement to a particular type of treatment, even though the worker continues to have a compensable disability. The Board may decide to limit treatment in a number of situations. Such situations include, but are not limited to, the following:

- preventing the provision of concurrent treatment; or
- denying the extension of a particular type of treatment.

Generally, the Board does not pay health care accounts for health care provided after the date of the Board's decision to limit a worker's entitlement to a particular type of

treatment, unless the health care accounts are submitted promptly and in good faith in respect of treatment provided on or before the decision date.

### 4.3 Disallowed or Rejected Claims

A decision to disallow or reject a worker's claim for personal injury, occupational disease or mental disorder may be made on initial adjudication, reconsideration, review or appeal. Generally, the Board does not pay health care accounts for health care provided after the date such a decision is made, unless they are submitted promptly and in good faith in respect of reporting or form fees, or Board-directed examinations, consultations or assessments.

When a worker's previously allowed claim for personal injury, occupational disease or mental disorder is subsequently disallowed or rejected, the Board does not initiate any steps to recover amounts the Board has already paid for health care. However, if the Board were offered reimbursement by any other agency, the offer would be accepted.

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| **EFFECTIVE DATE:** | October 21, 2020 |
| **AUTHORITY:** | Sections 156, 157, and 164 of the *Act*. |
| **CROSS REFERENCES:** | Item C10-73.00, *Direction, Supervision, and Control of Health Care*;<br>Item C10-74.00, *Reduction or Suspension of Compensation*;<br>Item C10-76.00, *Physicians and Qualified Practitioners*;<br>Item C10-77.00, *Other Recognized Health Care Professionals*;<br>Policy item #95.00, *Responsibilities of Physicians/Qualified Practitioners*;<br>Policy item #95.10, *Form of Reports*;<br>Policy item #95.20, *Reports by Specialists*;<br>Policy item #95.30, *Failure to Report*;<br>Policy item #95.40, *Obligation to Advise and Assist Worker*;<br>Policy item #96.21, *Preliminary Determinations*;<br>Policy item #99.20, *Notification of Decisions*, of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **HISTORY:** | June 1, 2024 − Housekeeping changes made to modernize terminology by removing gendered language.<br>October 21, 2020 – Amended to reflect amendment to the health care provisions in the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020.<br>April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.<br>January 1, 2015 − This policy consolidated and replaced former policy items #73.10, #76.20, #78.30, #78.31, #78.32, and incorporated concepts from former policy item #78.33, all of the *Rehabilitation Services & Claims Manual*, Volume II.<br>June 1, 2009 – Deleted references to Board officer and Health Care Services Department.<br>March 3, 2003 – Inserted references to Review Division, and Workers' Compensation Appeal Tribunal. |
| **APPLICATION:** | Applies on or after October 21, 2020. |

- there has been an error of law, such as a failure by the Board to follow the express terms of the *Act*.

#### (ii) Reconsiderations after 75 days under section 123(3) of the *Act*

Subject to the restrictions set out above, and after the 75-day period has elapsed since the decision was made, the Board may reconsider a decision on its own initiative under section 123(3) only where the decision contains an obvious error or obvious omission.

An "error" is a mistake or something that is wrong or incorrect; an "omission" is the failure to do something that is required by law or policy.

An obvious error or omission is easily and plainly identifiable with minimal investigation. An obvious error or omission does not arise where one simply disagrees with the decision-maker's exercise of judgment or weighing of the evidence.

The Board may reconsider a decision under section 123(3) only where there has been an obvious error or omission in the application of law and/or policy; or an obvious error or omission in relation to a mistake of evidence. New evidence may be considered under section 123(3) only where it plainly identifies an obvious error or omission and is material and substantial to the decision. If the new evidence is submitted by a party, the Board considers whether the new evidence was submitted without unreasonable delay.

Section 123(3) applies to obvious errors and omissions in a decision made by the Board other than review officer decisions.

### (f) Authority of Board officers, Managers and Directors to reconsider

#### (i) Reconsiderations within 75 days under section 123(1) of the *Act*

A Board officer, Manager or Director may only reconsider a decision where appropriate based on the applicable law and policy, and the merits and justice of the case. A Board officer, Manager or Director may reweigh the evidence and substitute their own judgment for that of the initial decision-maker.

#### (ii) Reconsiderations after 75 days under section 123(3) of the *Act*

A Board officer, Manager or Director may only reconsider a decision where there is an obvious error or obvious omission.

Prior approval of a Manager or Director is required before a Board officer proceeds with a reconsideration under section 123(3).

## (g) Correction of administrative errors

The correction of an administrative error such as a clerical, typographical or mathematical error or an error in an agreed statement of facts does not result in a reconsideration of a previous decision. The ability to correct these types of errors would not be considered a reconsideration of the original decision, as it would not change the intent of the original decision made by the Board.

The limits on reconsiderations of previous decisions do not prevent the Board from issuing an addendum to correct a clerical or typographical error in a decision. This may be done where the text of the decision did not correctly reflect the Board's intent. An example of a clerical error might include a reference in a decision letter to $25,000 rather than $52,000 for a worker's earnings, but it is clear from the evidence on the claim that this was a simple typographical error.

An administrative error may occur when the decision as recorded does not clearly reflect the intention of the Board. For example, a decision letter states "I do accept the degenerative changes as part of the claim", however; the remainder of the letter and the evidence on the claim clearly illustrate that the Board intended that the letter state "I do not accept".

This process for correcting administrative errors, however, cannot be applied to change decisions.

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| **EFFECTIVE DATE:** | October 29, 2020 |
| **AUTHORITY:** | Section 123 of the *Act*. |
| **CROSS REFERENCES:** | Item C14-101.01, *Changing Previous Decisions – General*;<br>Item C14-102.01, *Changing Previous Decisions – Reopenings*;<br>Item C14-104.01, *Changing Previous Decisions – Fraud and Misrepresentation*, of the *Rehabilitation Services & Claims Manual*, Volume II. |
| **HISTORY:** | June 1, 2024 − Housekeeping changes made to modernize terminology by removing gendered language.<br>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.<br>April 6, 2020 − Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.<br>April 1, 2010 – Deleted reference to providing written communication of rights of review.<br>June 1, 2009 – Deleted references to Board officers and decision-maker.<br>April 8, 2005 − Housekeeping amendment to correct numbering.<br>January 1, 2005 – Amendments to include policy on the correction of administrative errors. Applied to all decisions on or after January 1, 2005. |

March 3, 2003 – New Item consequential to the *Workers Compensation Amendment Act (No. 2), 2002.*

**APPLICATION:** Applies to all decisions made on or after October 29, 2020.