

CHAPTER 6

PERMANENT DISABILITY AWARDS

#36.00 INTRODUCTION

Permanent disability awards are made when a worker fails to completely recover from an industrial injury or disease, but is left with a permanent residual disability. They commence at the point when the worker's temporary disability under the claim ceases and the condition stabilizes. They may be total (Section 22) or partial (Section 23).

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

#37.00 PERMANENT TOTAL DISABILITY

Section 22(1) provides that "Where permanent total disability results from the injury, the compensation must be a periodic payment to the injured worker equal in amount to 75% of the worker's average earnings, and must be payable during the lifetime of the worker."

A pension is awarded to a worker which continues for life. Some examples of permanent total disability are paraplegia, quadriplegia, hemiplegia, total blindness, and severe loss of cerebral powers. Combinations of permanent partial physical impairments can also become permanent total disabilities, such as bilateral amputations of arms and legs.

#37.10 Commencement of Pension/Wage-Loss Payments Prior to Award

Permanently totally disabled workers are awarded pensions as soon as it is clear to the Board that they will survive their injuries.

From the date of the injury up to the date of the award, wage-loss payments are made at the same rate as the eventual pension. (Reference should be made to #66.20 regarding minimum policy in personal optional protection cases.) However, it may be necessary to make these payments at a provisional rate pending clarification of the worker's pre-injury earnings. (1)

#37.20 Minimum Amount of Compensation

Section 22(2) provides that the compensation awarded for permanent total disability cannot be less per month than the minimum set out below. This minimum is subject to Consumer Price Index increases.

Date			\$ Minimum
July 1, 2000	—	December 31, 2000	1,269.36
January 1, 2001	—	June 30, 2001	1,294.21
July 1, 2001	—	December 31, 2001	1,314.54
January 1, 2002	—	June 30, 2002	1,319.06

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

Section 33(5) provides that the compensation payable to workers who, on July 1, 1974, were in receipt of compensation for permanent total disability cannot be less than the amount set out above. This amount is subject to Consumer Price Index adjustments.

Where workers partially commuted their pensions prior to July 1, 1974, and are eligible for the increased minimum provided by Section 33(5), they do not simply receive a percentage increase on the benefits currently being received. The full amount of the increased minimum is paid, less the actual dollar amount that has been commuted. (2)

#37.21 Dual System of Measuring Disability

The statutory minimum only applies in cases where a worker is found to be 100% disabled on a physical impairment basis. It does not apply when the percentage of disability on a physical impairment basis is less than 100% but the worker is found to be totally unemployable under the dual system of measuring disability. (3)

#37.30 Manner of Payment

A monthly pension is awarded which is paid by cheque or, if the worker elects, by electronic direct bank deposit, at the end of each month. The same procedures apply as in the case of permanent partial disability awards. These are set out in #41.00.

#37.40 Reopening Claims

Where a claim involving a permanent total disability is reopened, no payments of wage loss can be made. Wage loss may, however, be payable where a claimant

receiving a permanent total disability pension of less than the current maximum suffers a new injury at work. The amount payable would be the difference between the pension being paid on the old claim and 75% of the wage rate on the new claim, limited by the current maximum.

#38.00 PERMANENT PARTIAL DISABILITY

The Board has two basic methods of assessing permanent partial disabilities. These are:

1. Loss of function/physical impairment method.
2. The projected loss of earnings method.

The use of these two methods is termed the "Dual System". These two methods are considered in every case where applicable, the amount of the pension being the higher of the two figures produced by the two methods.

#38.10 Decision-Making Procedure

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

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

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

The Disability Awards Committee is ultimately responsible for the conclusion on projected loss of earnings awards implemented under section 23(3) of the *Act*. The Disability Awards Officer or Adjudicator is required to conduct the necessary investigations and make a specific recommendation to the committee. It is the

function of the committee, following any further investigation it considers necessary, to agree or disagree with the Disability Awards Officer's or Adjudicator's recommendation. If the committee agrees, the Disability Awards Officer or Adjudicator will establish a pension according to the initial recommendation. If the committee disagrees with the Disability Awards Officer's or Adjudicator's recommendation, it will either establish an award which it deems appropriate to the circumstances or return the file for further investigation. The Disability Awards Committee consists of one senior representative from the Disability Awards, Medical, and Vocational Rehabilitation Services Departments.

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

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

EFFECTIVE: March 3, 2003 (as to reference to reopening and deletion of references to pension review and appeals)
APPLICATION: Not applicable.

#39.00 LOSS OF FUNCTION/PHYSICAL IMPAIRMENT ASSESSMENT

Section 23(1) provides that "Where permanent partial disability results from the injury, the impairment of earning capacity must be estimated from the nature and degree of the injury, and the compensation must be a periodic payment to the injured worker of a sum equal to 75% of the estimated loss of average earnings resulting from the impairment, and must be payable during the lifetime of the worker or in another manner the board determines."

The physical impairment method is the primary one used for measuring permanent disabilities. It is the method provided for in Section 23(1). In applying this method, the Board does not normally have regard to the individual worker's actual loss of earnings. It considers the physical and/or psychological condition of the worker. It results in a percentage of disability being allocated to the claimant's condition.

Once the percentage of disability is determined, it is applied to the worker's average earnings, and the pension is 75% of the amount so determined. For

instance, consider a worker with a 30% disability with average earnings of \$3,400.00 per month:

	30% of 3,400.00	1,020.00
Monthly pension	75% of 1,020.00	765.00

There are two basic methods for assessing the percentage of disability. These are the Scheduled method and the Non-Scheduled method.

Where a claim is reopened more than three years after the injury and a worker has a compensable permanent disability or an increased permanent disability, but is unemployed at the time of the reopening otherwise than through the effects of the injury, and it is determined that the worker has no potential loss of earnings, a pension will be assessed on a physical impairment basis under Section 23(1) of the *Workers Compensation Act*. It will be calculated on the basis of the wage rate originally set on the claim subject to any appropriate wage rate review being carried out or Consumer Price Index adjustments.

#39.01 Chronic Pain

This policy sets out guidelines for the assessment of section 23(1) awards for workers who experience disproportionate disabling chronic pain as a compensable consequence of a physical or psychological work injury.

1. Definitions:

Chronic pain is defined as pain that persists six months after an injury and beyond the usual recovery time of a comparable injury.

The Board distinguishes between two types of chronic pain symptoms:

Specific chronic pain - pain with clear medical causation or reason, such as pain that is associated with a permanent partial or total physical or psychological disability.

Non-specific chronic pain - pain that exists without clear medical causation or reason. Non-specific pain is pain that continues following the recovery of a work injury.

2. Multidisciplinary Assessment:

Where a worker has been referred for a permanent partial disability assessment under section 23(1) for chronic pain, the Board officer in Disability Awards may refer the worker for a multidisciplinary assessment. (See policy item #22.35, "Pain and Chronic Pain")

A multidisciplinary assessment may involve consideration of the worker's medical history, health status, the impact of the pain on the worker's physical functioning, psychological state, behaviour, ability to perform the pre-injury occupation and ability to perform activities of daily living. [See policy item #22.35, "Pain and Chronic Pain", subsection 2(b)]

Based on the various assessments, the evaluation will provide the Board officer with information on whether the worker is experiencing persistent chronic pain as a result of a work injury or disease and the extent of the chronic pain. The evaluation will also provide information on the consistency of the worker's pain presentations.

3. Evidence Considered in a Chronic Pain Section 23(1) Assessment:

In making a determination under section 23(1), the Disability Awards Officer or Adjudicator in Disability Awards will enquire carefully into all of the circumstances of a worker's chronic pain resulting from a compensable injury or disease.

The evidence that a Board officer may consider in a section 23(1) assessment for chronic pain includes the following:

- i) The findings of any multidisciplinary assessments.
- ii) Information provided by the worker's attending physician as well as any other relevant medical information on the claim.
- iii) The worker's own statements regarding the nature and extent of the pain.
- iv) The worker's conduct and activities and whether they are consistent with the pain complaints.
- v) In cases of specific chronic pain, the Board officer will consider the extent of the associated physical or psychological permanent impairment and whether the specific chronic pain is in keeping with the particular permanent impairment.

The evidence that is relied upon to support the assessment of a section 23(1) award must be fully documented.

4. Entitlement to a Section 23(1) Assessment:

Entitlement to a section 23(1) award for chronic pain may only be considered after all appropriate medical treatment and rehabilitation interventions have been concluded.

(a) Specific Chronic Pain – Consistent with the Impairment

Where a worker has specific chronic pain that is consistent with the associated compensable physical or psychological permanent impairment, the section 23(1) award will be considered to appropriately compensate the worker for the impact of the chronic pain. Pain is considered to be consistent with the associated compensable impairment where the pain is limited to the area of the impairment, or medical evidence indicates that the pain is an anticipated consequence of the physical or psychological impairment. In these cases, an additional award for the specific chronic pain will not be provided, as it would result in the worker being compensated twice for the impact of the pain.

(b) Specific and Non-Specific Chronic Pain – Disproportionate to the Impairment

A worker's entitlement to a section 23(1) award for chronic pain will be considered in the following cases:

- i) Where a worker experiences specific chronic pain that is disproportionate to the associated objective physical or psychological impairment.

Pain is considered to be disproportionate where it is generalized rather than limited to the area of the impairment or the extent of the pain is greater than that expected from the impairment.

In these cases, a separate section 23(1) award for chronic pain may be considered in addition to the award for objective permanent impairment.

- ii) Where a worker experiences disproportionate non-specific chronic pain as a compensable consequence of a work injury or disease.

Disproportionate pain, for the purposes of this policy, is pain that is significantly greater than what would be reasonably expected given the type and nature of injury or disease.

Where a Board officer determines that a worker is entitled to a section 23(1) award for chronic pain in the above noted situations, an award equal to 2.5% of total disability will be granted to the worker.

EFFECTIVE DATE: January 1, 2003
APPLICATION: Applies to new claims received and all active claims that are currently awaiting an initial adjudication.

#39.10 Scheduled Awards *Permanent Disability Evaluation Schedule*

For all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003, please refer to the *Permanent Disability Evaluation Schedule* in Appendix 4 of Volume II and the appropriate policies in Chapter 6 of Volume II on the application of the *Schedule*.

Scheduled awards are awards made under the Permanent Disability Evaluation Schedule, which is set out in Appendix 4. This is a rating schedule of percentages of impairment for specific injuries or mutilations. (4)

The Permanent Disability Evaluation Schedule is a set of guide-rules, not a set of fixed rules. The Disability Awards Officer or Adjudicator in Disability Awards is still free to apply other variables in arriving at a final pension; but the "other variables" referred to means other variables relating to the degree of physical impairment, not other variables relating to social or economic factors, nor rules (including schedules and guide-rules) established in other jurisdictions. In particular, the actual or projected loss of earnings of a worker because of the disability is not a variable which can be considered. (5)

Any revision of the schedule must be undertaken by procedures that are appropriate to changes of a legislative nature. It will not be done through appeal decisions in individual cases. The schedules in use in other jurisdictions are part of the material that would be looked at in any revision of the schedule used here; but they are not part of the material relevant in the decision of any individual claim.

In cases where the specific impairment is not covered by the schedule, but the part of the body in question is covered, the Disability Awards Officer or Adjudicator must first determine the percentage loss of function in the damaged area. This determination is based on the findings of the permanent functional impairment evaluation and other medical and non-medical evidence available. The final award is arrived at by taking this percentage of the percentage allocated in the schedule to the disabled part of the body. Because the schedule is used in the calculation, this type of award is still considered as a scheduled one. For example, the amputation of an arm down to the proximal third of the humerus or its disarticulation at the shoulder is scheduled at 70% of total disability. Suppose a worker suffers a severe crush injury to the arm which culminates in a permanent loss of half its function. The final assessment would be 50% of 70%, i.e. 35% of total disability.

CHAPTER 6

PERMANENT DISABILITY AWARDS

#36.00 INTRODUCTION

Permanent disability awards are made when a worker fails to completely recover from a work-related injury or occupational disease, but is left with a permanent residual disability. They commence at the point when the worker's temporary disability under the claim ceases and the condition stabilizes. They may be total (section 22) or partial (section 23).

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

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

#36.20 Canada Pension Plan Disability Benefits

Section 34(2) of the *Act* provides:

Subject to sections 7(4.1), 22(2) and 23(4), the Board must deduct, from the amount of a periodic payment of compensation paid to a worker under section 22(1) or 23(1) or (3) for an injury, an amount equal to 50% of any disability benefit that the worker is paid in respect of the injury under the *Canada Pension Plan*.

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

Where a worker is paid CPP disability benefits for his or her dependent children, the Board does not deduct CPP disability child benefits from the worker's permanent disability award.

compensation payable under 23(1), the Board may be guided by section 23(2), which permits the use of a schedule of percentages of impairment of earning capacity for specified injuries or mutilations.

In all but exceptional cases, the effect of the disability on a worker will be appropriately compensated under section 23(1).

Only in exceptional cases will section 23(1) not be the method of assessment used to determine a worker's entitlement to a permanent partial disability award. In these cases the Board considers whether the combined effect of a worker's occupation at the time of injury and the disability resulting from the injury is so exceptional, that the section 23(1) method does not appropriately compensate the worker for the injury. In these exceptional cases, the Board has the discretion to assess a worker's entitlement to a permanent partial disability award under section 23(3) of the *Act*.

#39.00 SECTION 23(1) ASSESSMENT

Section 23(1) of the *Act* provides:

Subject to subsections (3) to (3.2) and sections 34 and 35, if a permanent partial disability results from a worker's injury, the Board *must*

- (a) estimate the impairment of earning capacity from the nature and degree of the injury, and
- (b) pay the worker compensation that is a periodic payment that equals 90% of the Board's estimate of the loss of average net earnings resulting from the impairment.

(emphasis added)

In all cases where a permanent partial disability results from a worker's injury, the Board must assess the worker's entitlement to a permanent partial disability award under section 23(1) of the *Act*. Section 23(1) is a mandatory legislative provision which sets out the rule the Board follows in determining a worker's impairment of earnings capacity resulting from a work injury.

The percentage of disability determined for the worker's condition under section 23(1)(a), reflects the extent to which a particular injury is likely to impair a worker's ability to earn in the future.

A permanent partial disability award calculated under section 23(1) also reflects such factors as:

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

In assessing a worker's entitlement to a permanent partial disability award under section 23(1), the Board may make reference to section 23(2) of the *Act*. Section 23(2) of the *Act* provides

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

Once the percentage of disability is determined, it is applied to the worker's long term average net earnings, and the permanent partial disability award is 90% of the amount so determined. The permanent partial disability award is granted following the determination of a worker's entitlement under section 23(1) of the *Act*.

Under the section 23(1) method of permanent partial disability assessment, a worker's percentage of disability is expressed as a percentage of total disability, with one hundred percent (100%) being the maximum possible rating for a totally disabled worker. A worker's percentage of permanent partial disability is based on the whole person. A worker, therefore, cannot be more than 100% disabled as a result of a work injury or combination of injuries.

#39.01 Decision-Making Procedure under Section 23(1)

Section 23(1) assessments are undertaken once a worker reaches medical plateau.

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

Section 23(1) evaluations may be conducted by the Board or a Board authorized External Service Provider. The Board sets protocols and procedures for these evaluations. The Board determines whether the evaluation will be referred to an

External Service Provider based on the nature of the injury and other relevant criteria as set out in the protocols. The Board may determine the worker's section 23(1) entitlement without a medical examination, if there is sufficient medical information on file to complete the assessment.

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

The Board assesses any percentage of disability for physical impairment and, in conjunction with the Committee's percentage of psychological disability, determines the worker's permanent disability award under the section 23(1) method.

EFFECTIVE DATE: June 1, 2009 – Remove references to Board officer, Rehabilitation and Compensation Services Division, Disability Awards Medical Advisor and Board authorized External Service Provider.

HISTORY: August 1, 2003 – housekeeping changes.

APPLICATION: Applies on or after June 1, 2009.

#39.02 *Chronic Pain*

This policy sets out guidelines for the assessment of section 23(1) awards for workers who experience disproportionate disabling chronic pain as a compensable consequence of a physical or psychological work injury.

1. Definitions:

Chronic pain is defined as pain that persists six months after an injury and beyond the usual recovery time of a comparable injury.

The Board distinguishes between two types of chronic pain symptoms:

Specific chronic pain - pain with clear medical causation or reason, such as pain that is associated with a permanent partial or total physical or psychological disability.

Non-specific chronic pain - pain that exists without clear medical causation or reason. Non-specific pain is pain that continues following the recovery of a work injury.

2. Multidisciplinary Assessment:

Where a worker has been referred for a permanent partial disability assessment under section 23(1) for chronic pain, the Board may refer the worker for a multidisciplinary assessment. (See Item C3-22.20, *Compensable Consequences - Pain and Chronic Pain*)

A multidisciplinary assessment may involve consideration of the worker's medical history, health status, the impact of the pain on the worker's physical functioning, psychological state, behaviour, ability to perform the pre-injury occupation and ability to perform activities of daily living. (See Item C3-22.20, *Compensable Consequences - Pain and Chronic Pain*)

Based on the various assessments, the evaluation will provide the Board with information on whether the worker is experiencing persistent chronic pain as a result of a work injury or disease and the extent of the chronic pain. The evaluation will also provide information on the consistency of the worker's pain presentations.

3. Evidence Considered in a Chronic Pain Section 23(1) Assessment:

In making a determination under section 23(1), the Board will enquire carefully into all of the circumstances of a worker's chronic pain resulting from a compensable injury or disease.

The evidence that the Board may consider in a section 23(1) assessment for chronic pain includes the following:

- i) The findings of any multidisciplinary assessments.
- ii) Information provided by the worker's attending physician as well as any other relevant medical information on the claim.
- iii) The worker's own statements regarding the nature and extent of the pain.
- iv) The worker's conduct and activities and whether they are consistent with the pain complaints.
- v) In cases of specific chronic pain, the Board will consider the extent of the associated physical or psychological permanent impairment and whether the specific chronic pain is in keeping with the particular permanent impairment.

The evidence that is relied upon to support the assessment of a section 23(1) award must be fully documented.

4. Entitlement to a Section 23(1) Assessment:

Entitlement to a section 23(1) award for chronic pain may only be considered after all appropriate medical treatment and rehabilitation interventions have been concluded.

(a) Specific Chronic Pain – Consistent with the Impairment

Where a worker has specific chronic pain that is consistent with the associated compensable physical or psychological permanent impairment, the section 23(1) award will be considered to appropriately compensate the worker for the impact of the chronic pain. Pain is considered to be consistent with the associated compensable impairment where the pain is limited to the area of the impairment, or medical evidence indicates that the pain is an anticipated consequence of the physical or psychological impairment. In these cases, an additional award for the specific chronic pain will not be provided, as it would result in the worker being compensated twice for the impact of the pain.

(b) Specific and Non-Specific Chronic Pain – Disproportionate to the Impairment

A worker's entitlement to a section 23(1) award for chronic pain will be considered in the following cases:

- i) Where a worker experiences specific chronic pain that is disproportionate to the associated objective physical or psychological impairment.

Pain is considered to be disproportionate where it is generalized rather than limited to the area of the impairment or the extent of the pain is greater than that expected from the impairment.

In these cases, a separate section 23(1) award for chronic pain may be considered in addition to the award for objective permanent impairment.

- ii) Where a worker experiences disproportionate non-specific chronic pain as a compensable consequence of a work injury or disease.

Disproportionate pain, for the purposes of this policy, is pain that is significantly greater than what would be reasonably expected given the type and nature of injury or disease.

Where the Board determines that a worker is entitled to a section 23(1) award for chronic pain in the above noted situations, an award equal to 2.5% of total disability will be granted to the worker.

EFFECTIVE DATE: June 1, 2009 – Delete references to Board officers.
HISTORY: January 1, 2003 – Amendments set out guidelines for the assessment of section 23(1) awards for workers who experience disproportionate disabling chronic pain as a compensable consequence of a physical or psychological work injury. Amendments apply to new claims received and all active claims that are currently awaiting an initial adjudication on or after January 1, 2003.
APPLICATION: Applies on or after June 1, 2009

#39.10 Permanent Disability Evaluation Schedule

Section 23(1) awards may be made with reference to the *Permanent Disability Evaluation Schedule* (“*Schedule*”), which is set out in Appendix 4. This is a rating schedule of percentages of disability for specific injuries or mutilations. (3)

The *Schedule* is a set of guide-rules, not a set of fixed rules. The Board is free to apply other variables in arriving at a final award; but the “other variables” referred to means other variables relating to the degree of physical or psychological impairment, not other variables relating to social or economic factors, nor rules (including schedules and guide-rules) established in other jurisdictions. In particular, the actual or projected loss of earnings of a worker because of the disability is not a variable which can be considered. (4)

In cases where the specific impairment is not covered by the *Schedule*, but the part of the body in question is covered, the Board must first determine the percentage loss of function in the damaged area. This determination is based on the findings of the section 23(1) evaluation and other medical and non-medical evidence available. The final award is arrived at by taking this percentage of the percentage allocated in the *Schedule* to the disabled part of the body. Because the *Schedule* is used in the calculation, this type of award is still considered as a scheduled one. For example, the amputation of an arm down to the proximal third of the humerus or its disarticulation at the shoulder is scheduled at 70% of total disability. Suppose a worker suffers a severe crush injury to the arm which culminates in a permanent loss of half its function. The final assessment would be 50% of 70%, i.e. 35% of total disability.

EFFECTIVE DATE: June 1, 2009 – Delete references to Board officers.
HISTORY: August 1, 2003 – Deletion of statements regarding revisions to the *Schedule* and housekeeping changes.
APPLICATION: Applies on or after June 1, 2009