

REHABILITATION SERVICES & CLAIMS MANUAL

VOLUME II

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WORKERS' COMPENSATION BOARD OF BC

*Workers and Workplaces
Safe and Secure from Injury and Disease*

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PREFACE

Section 82 of the *Workers Compensation Act* provides that the Board of Directors of the Workers' Compensation Board must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation and occupational safety and health (or prevention).

The policies of the Board of Directors consist of:

- (a) The statements contained under the heading "Policy" in the *Assessment Manual*,
- (b) The statements contained under the heading "Policy" in the *Prevention Manual*,
- (c) The *Rehabilitation Services & Claims Manual*, Volume I and Volume II, except statements under the headings "Background" and "Practice" and explanatory material at the end of each Item appearing in the new manual format,
- (d) The *Classification and Rate List*, as approved annually by the Board of Directors,
- (e) Decisions No. 1 – 423 in Volumes 1 – 6 of the *Workers' Compensation Reporter* prior to the date each Decision was retired from policy status,¹ and
- (f) Policy decisions of the former Governors and the former Panel of Administrators still in effect immediately before February 11, 2003,

as well as amendments to policy in the four policy manuals, any new or replacement manuals issued by the Board of Directors, any documents published by the Workers' Compensation Board that are adopted by the Board of Directors as policies of the Board of Directors, and all decisions of the Board of Directors declared to be policy decisions.

The *Manual* in which this preface appears (*Rehabilitation Services & Claims Manual*, Volume II) contains current Board policy with respect to the rehabilitation and compensation matters described in Chapter 1 of the *Manual*. It is used by Board staff in carrying out their responsibilities under the *Workers Compensation Act*. As new policy is developed and approved in this area, the *Manual* will be updated by issuing replacement pages.

¹ All of Decisions No. 1 – 423 have been retired from policy status. An explanation of "retirement" and an index of retirement dates are found in APPENDIX 1 to this *Manual*.

EXPLANATION OF HOW TO USE VOLUME II OF THIS *MANUAL*

Volume II comprises:

1. A Preface;
2. A Table of Contents;
3. Seventeen chapters;
4. Seven appendices.

The Table of Contents is a list of the numbered headings and sub-headings found in each chapter and states the page where the heading or sub-heading may be found. A search of the Table of Contents will help you to discover which parts of the manual deal with any particular issue with which you are concerned.

The material in the chapters is arranged logically according to subject matter and not in the same order as matters are dealt with in the *Workers Compensation Act*. As it deals with different subjects, the manual sets out the relevant provisions of the *Act* but does not set out the whole of the *Act* in one place. Each chapter is divided into headings and sub-headings according to subject matter. These headings and sub-headings are numbered consecutively for ease of reference.

The bracketed numbers found throughout the text of the chapters refer to the Notes at the end of each chapter. Cross-references to other parts of the manual are simply given by heading or sub-heading number.

References to sections of the *Workers Compensation Act* in the Notes use an "S." abbreviation for "section" and do not specifically refer to that *Act*. For instance, "s.2" means section 2 of the current *Workers Compensation Act*. A reference to a section of any other statute will specifically name that statute.

The appendices contain various schedules and fines with cross-references to the main text.

The numbering of pages recommences at 1 at the beginning of each chapter and appendix. The pages in different chapters are distinguished by placing the number of the chapter and a hyphen before the page number. For example, page 3-2 is page 2 of Chapter 3. The pages in each appendix are distinguished by placing A plus the number of the appendix and a hyphen before the page number. For instance, page A2-3 is page 3 of Appendix 2.

Replacement pages for Volume II will be issued from time to time.

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**RE: Arising Out of and
In the Course of the Employment**

ITEM: C3-14.00

BACKGROUND

1. Explanatory Notes

This is the principal policy of this Chapter and sets out the decision-making principles for determining a worker's entitlement to compensation for personal injury or death under the *Act*.

2. The Act

Section 5(1):

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

Section 99(3):

If the Board is making a decision respecting the compensation or rehabilitation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the Board must resolve that issue in a manner that favours the worker.

POLICY

The test for determining if a worker's personal injury or death is compensable, is whether it arises out of and in the course of the employment. The two components of this test of employment connection are discussed below.

In applying the test of employment connection, it is important to note that employment is a broader concept than work and includes more than just productive work activity. An injury or death that occurs outside a worker's productive work activities may still arise out of and in the course of the worker's employment.

A. Meaning of “Arising Out of the Employment”

“Arising out of the employment” generally refers to the cause of the injury or death. In considering causation, the focus is on whether the worker’s employment was of causative significance in the occurrence of the injury or death.

Both employment and non-employment factors may contribute to the injury or death. The employment factors need not be the sole cause. However, in order for the injury or death to be compensable, the employment has to be of causative significance, which means more than a trivial or insignificant aspect of the injury or death.

B. Meaning of “In the Course of the Employment”

“In the course of the employment” generally refers to whether the injury or death happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the employment. Time and place are not strictly limited to the normal hours of work or the employer’s premises.

C. Evidence

The Board considers both medical and non-medical evidence to determine whether a worker’s injury or death arises out of and in the course of the employment.

The standard of proof is the balance of probabilities, and consideration is given to section 99(3) of the *Act*.

i. Medical

When reviewing medical evidence, the Board considers whether:

- there is a physiological association between the injury or death and the employment activity, including whether the activity was of sufficient degree and/or duration to be of causative significance in the injury or death;
- there is a temporal relationship between the work activity and the injury or death; and
- any non-work related medical conditions were a factor in the resulting injury or death.

The Board also considers any other relevant medical evidence to assist in determining whether a worker’s injury or death arises out of and in the course of the employment.



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ii. Non-Medical

In addition to medical evidence, the Board considers the factors described below. All of the factors listed may be considered in making a decision, but no one of them may be used as an exclusive test for deciding whether an injury or death arises out of and in the course of the employment. This list is by no means exhaustive, and relevant factors not listed in policy may also be considered.

Other policies in this chapter may provide further guidance as to whether the injury or death arises out of and in the course of the employment in particular situations.

1. On Employer's Premises

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

An employer's premises includes any land or buildings owned, leased, rented, or controlled (solely or shared) for the purpose of carrying out the employer's business. An employer's premises may also include:

- captive roads (see Item C3-19.00, *Work-Related Travel*); and
- employer-provided facilities (see Item C3-20.00, *Employer-Provided Facilities*).

2. For Employer's Benefit

Did the injury or death occur while the worker was doing something for the benefit of the employer's business? If the worker is in the process of doing something for the benefit of the business generally or the employer personally, this factor favours coverage. If the worker is in the process of doing something solely for the worker's own benefit, this factor does not favour coverage.

In the case of independent operators and active principals of corporations, it is necessary to distinguish between the activities the independent operators or active principals carry on in furtherance of the business, and personal activities undertaken independent of the business. Only injuries or death occurring while pursuing the former type of activity may be considered to arise out of and in the course of the employment.

3. Instructions From the Employer

Did the injury or death occur in the course of action taken in response to instructions from the employer? For example, did the employer direct or request that the worker participate in an activity as part of the employment? The clearer the direction, the more this factor favours coverage.

The more tenuous the direction, the less this factor favours coverage: for example, if the worker was doing something on a purely voluntary basis, or the employer simply sanctioned participation without directing or requesting it.

4. Equipment Supplied by the Employer

Did the injury or death occur while the worker was using equipment or materials supplied by the employer? If so, this factor favours coverage.

5. Receipt of Payment or Other Consideration from the Employer

Did the injury or death occur while the worker was in the process of receiving payment or other consideration from the employer? If so, this factor favours coverage.

This includes cases where the worker is required to report to the employer's premises or office in order to pick up a paycheque, whether or not this is during a regular shift.

6. During a Time Period for which the Worker was Being Paid or Receiving Other Consideration

Did the injury or death occur during a time period in which the worker was paid a salary or other consideration, or did the injury or death occur during paid working hours? If so, this is a factor that favours coverage.

7. Activity of the Employer, a Fellow Employee or the Worker

Was the injury or death caused by an activity of the employer or of a fellow employee? If so, this factor favours coverage.

Was the injury or death caused by a non-work related activity of the worker? The more tenuously the worker's activity is related to the employment, the less this factor favours coverage.

Consideration in either case is given to whether the activity of the employer, fellow employee or worker was employment-related or unauthorized (see Item C3-17.00, *Deviations from Employment*).

8. Part of Job

Did the injury or death occur while the worker was performing activities that were part of the worker's job? If so, this factor favours coverage.



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9. Supervision

Did the injury or death occur while the worker was being supervised by the employer or a representative of the employer having supervisory authority? If so, this factor favours coverage.

PRACTICE

For any relevant PRACTICE information please consult the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	July 1, 2010
AUTHORITY:	Section 5(1) of the Act.
CROSS REFERENCES:	Item C3-17.00, <i>Deviations from Employment</i> ; Item C3-18.00, <i>Personal Acts</i> ; Item C3-19.00, <i>Work-Related Travel</i> ; Item C3-20.00, <i>Employer-Provided Facilities</i> .
HISTORY:	This policy includes content from former policy items #14.00 and #21.30 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. Former policy item #14.00 was amended effective June 1, 2004 to include "whether the injury occurred while the worker was performing activities that were part of the regular job duties" and "whether the injury occurred while the worker was being supervised by the employer" as factors to be considered. The amendment applied to all injuries on or after June 1, 2004 and was undertaken as part of the review of former policy item #20.20.
APPLICATION:	This item applies to all claims for injuries occurring on or after July 1, 2010.

determine their meaning, having regard to the medical and other evidence available as to what is a reasonable amount or duration of exposure.

EFFECTIVE DATE: June 1, 2004
APPLICATION: All decisions, including appellate decisions, made on or after June 1, 2004.

#26.22 *Non-Scheduled Recognition and Onus of Proof*

In some cases a worker may suffer an occupational disease not listed in Schedule B. In other cases a worker may suffer from an occupational disease listed in Schedule B but was not employed in the process or industry described opposite to it in the Schedule. In some cases a worker may suffer a disease not previously designated or recognized by the Board as an occupational disease. Here, the decision on whether the disease is due to the nature of any employment in which the worker was employed, is determined on the merits and justice of the claim without the benefit of any presumption. The same is true if for any other reason the requirements of section 6(3) are not met.

For this purpose the Board will conduct a detailed investigation of the worker's circumstances including information about the worker, their diagnosed condition, and their workplace activities. The Board is seeking to gather evidence that tends to establish that there is a causative connection between the work and the disease. The Board will also seek out or may be presented with evidence which tends to show there is no causative connection. The gathering and weighing of evidence generally is covered in policy items #97.00 through #97.60. The Board is to examine the evidence to see whether it is sufficiently complete and reliable to arrive at a sound conclusion with confidence. If not, the Board should consider what other evidence might be obtained, and must take the initiative in seeking further evidence. After that has been done, if, on weighing the available evidence, there is then a preponderance in favour of one view over the other, that is the conclusion that must be reached. Although the nature of the evidence to be obtained and the weight to be attached to it is entirely in the hands of the Board, to be sufficiently complete the Board should obtain evidence from both the worker and the employer, particularly if the Board is concerned about the accuracy of some of the evidence obtained.

Since workers' compensation in British Columbia operates on an inquiry basis rather than on an adversarial basis, there is no onus on the worker to prove his or her case. All that is needed is for the worker to describe his or her personal experience of the disease and the reasons why they suspect the disease has an occupational basis. It is then the responsibility of the Board to research the available scientific literature and carry out any other investigations into the origin of the worker's condition which may be necessary. There is nothing to prevent the worker, their representative, or physician from conducting their own research and investigations, and indeed, this may be helpful to the Board. However, the

worker will not be prejudiced by his or her own failure or inability to find the evidence to support the claim. Information resulting from research and investigations conducted by the employer may also be helpful to the Board.

As stated in policy item #97.10, a worker is also assisted in establishing a relationship between the disease and the work by section 99 of the *Act* that provides:

- (1) The Board may consider all questions of fact and law arising in a case, but the Board is not bound by legal precedent.
- (2) The Board must make its decision based upon the merits and justice of the case, but in so doing the Board must apply a policy of the board of directors that is applicable in that case.
- (3) If the Board is making a decision respecting the compensation or rehabilitation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the Board must resolve that issue in a manner that favours the worker.

Therefore if the weight of the evidence suggesting the disease was caused by the employment is roughly equally balanced with evidence suggesting non-employment causes, the issue of causation will be resolved in favour of the worker. This provision does not come into play where the evidence is not evenly weighted on an issue.

If the Board has no or insufficient positive evidence before it that tends to establish that the disease is due to the nature of the worker's employment, the Board's only possible decision is to deny the claim.

EFFECTIVE DATE: June 1, 2009 – Delete references to Board officers.
HISTORY: March 3, 2003 – New wording of section 99
APPLICATION: Applies on or after June 1, 2009

#26.30 Disabled from Earning Full Wages at Work

No compensation other than health care benefits are payable to a worker who suffers from an occupational disease (with the exception of silicosis, asbestosis, or pneumoconiosis and claims for hearing loss to which section 7 of the *Act* apply) unless the worker "is thereby disabled from earning full wages at the work at which the worker was employed". (3) No compensation is payable in respect of a deceased worker unless his or her death was caused by an occupational disease (also see section 6(11) of the *Act*).

Health care benefits may be paid to a worker who suffers from an occupational disease even though the worker is not thereby disabled from earning full wages at the work at which he or she was employed.