

## **CHAPTER 3**

### **COMPENSATION FOR PERSONAL INJURY**

#### **#12.00 INTRODUCTION**

The basic provision governing a worker's right to compensation for personal injury is Section 5(1). This provides that where, in an industry within the scope of the Act, personal injury or death arising out of and in the course of employment is caused to a worker, compensation as provided by the Act shall be paid by the Board.

The workers and employers covered were discussed in Chapter 2. This chapter considers primarily what constitutes a personal injury and when an injury or death arises out of and in the course of employment.

Apart from personal injury, the Board is authorized by Section 21(8) to replace or repair workers' artificial appliances, artificial members, eyeglasses, hearing aids, and dentures damaged at work. This section is discussed in #23.00.

#### **#13.00 PERSONAL INJURY**

“Personal injury” is defined as any physiological change arising from some cause, for example, a limitation in movement of the back or restriction in the use of a limb. It is not confined to injuries which are readily and objectively verifiable by their outward signs, e.g. breaks in the skin, swelling, discolouration, deformity, etc. It includes, for example, strains and sprains.

##### **#13.10 Distinction Between an Injury and Disease**

A common difficulty is to distinguish between an injury and a disease. This distinction is one that can be illustrated more easily than defined.

The following are examples of disorders classified as INJURIES:

1. Any wound (including any infection of the wound).
2. Fractures.
3. Any other disorder caused by trauma.
4. Any disorder caused by explosion (including hearing loss caused by explosion).

5. Sprains and strains, whether caused by a specific incident or by activity over time.
6. A damaged cartilage or ligament. It makes no difference whether the disability resulted from one major incident or a series of incidents or activity.
7. A dislocation of the bones at a joint. Again, it makes no difference whether this happened in one incident or in a series of incidents or activity.
8. Burns caused by a single incident of a chemical spilled on the skin.

The following are examples of disorders classified as DISEASES:

1. A disability caused by the gradual absorption of a chemical through the skin, by inhalation, or otherwise.
2. An infection (except when it is incidental to a compensable injury, when it is treated as part of the injury).
3. Hearing loss caused by exposure to noise over time, or by infection.
4. Osteoarthritis.
5. A disablement resulting from exposure to vibrations over time.
6. Contagious disease.
7. Allergic reactions.

Only diseases which are occupational diseases are compensable. The compensation payable in respect of occupational disease is discussed in Chapter 4.

In one case, a logger claimed in respect of damage to his knee that had been diagnosed as a fraying of the cartilage. He felt that his damage was the result of logging activity over a period of about five years, and did not allege that it resulted from a specific incident. It was concluded that, if it should appear that the fraying of the cartilage was externally caused through physical activity in which the claimant was engaged, and was not caused through degenerative disease, infection, or a disorder of internal origin, there was an injury rather than a disease.

In another case, the Adjudicator asked whether writer's cramp could be recognized as an occupational disease. It was concluded that claims for writer's cramp should be treated as claims for personal injury.

### *#13.12 Disablement from Vibrations*

There are some situations in which a disablement from vibrations would be classified as an “injury”. For example:

1. If the vibrations are of a traumatic nature, causing an instant disablement to a worker, such as an explosion.
2. If, though the vibrations may have occurred over a long period of time, the result was an instant or sudden disablement, possibly because of some sudden breakdown in the worker’s system.

Apart from those cases, a gradual deterioration in a worker’s condition resulting from exposure over time would not be an “injury”, but would be classified as an occupational disease. For example, vibrating hand tools may cause the decalcification of small areas of the bones of the carpus, or damage to the soft tissues of the hand, or osteoarthritis in the elbows, wrists or shoulders, or vascular disturbances.

### **#13.20 Psychological Impairment**

“Personal injury” includes psychological impairment as well as physical injury. A claim for traumatically induced psychological impairment could be accepted even if unaccompanied by any physical impairment. Psychological impairment has not been deemed to be an occupational disease. Conditions of this type however may be accepted if they are a sequela to an accepted personal injury or occupational disease.

### **#14.00 ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT**

Before a worker becomes entitled to compensation for injury under the Act, the injury must arise out of and in the course of employment.

Confusion often occurs between the term “work” and the term “employment”. Whereas the statutory requirement is that the injury arise out of and in the course of employment, it is often urged that a claim should be disallowed because the injury is not work related or did not occur in the course of productive activity. There are, however, activities within the employment relationship which would not normally be considered as work or in any way productive. For example, there is the worker’s drawing of pay. An injury in the course of such

activity is compensable in the same way as an injury in the course of productive work.

Lack of control of a situation by the employer is not a reason for barring a claim otherwise acceptable. Control by an employer is an indicator that a situation is covered under the Act at a particular time, but if that control does not exist there may be other factors which demonstrate an employment connection.

No single criterion can be regarded as conclusive for deciding whether an injury should be classified as one arising out of and in the course of employment. Various indicators can be and are commonly used for guidance. These include:

- (a) whether the injury occurred on the premises of the employer;
- (b) whether it occurred in the process of doing something for the benefit of the employer;
- (c) whether it occurred in the course of action taken in response to instructions from the employer;
- (d) whether it occurred in the course of using equipment or materials supplied by the employer;
- (e) whether it occurred in the course of receiving payment or other consideration from the employer;
- (f) whether the risk to which the employee was exposed was the same as the risk to which the employee is exposed in the normal course of production;
- (g) whether the injury occurred during a time period for which the employee was being paid;
- (h) whether the injury was caused by some activity of the employer or of a fellow employee.

This list is by no means exhaustive. All of these factors can be considered in making a judgment, but no one of them can be used as an exclusive test.

### **#14.10 Presumption**

Section 5(4) provides that "In cases where the injury is caused by accident, where the accident arose out of the employment, unless the contrary is shown, it must be presumed that it occurred in the course of the employment; and where

the accident occurred in the course of the employment, unless the contrary is shown, it must be presumed that it arose out of the employment.”

Thus for injuries resulting from an accident, evidence is only needed in the first instance to show either that the injury arose out of the employment or that it arose in the course of employment. The balance is presumed, unless there is evidence to the contrary. Generally speaking, “out of the employment” concerns the cause of injury and “in the course of the employment” its time and place.

There are, however, some limitations on the use of this subsection.

First, it is not a conclusive presumption. It is rebutted if opposing evidence shows that the contrary conclusion is the more likely. All reasonable efforts must be made to obtain all available evidence.

Second, the presumption only operates when the injury results from an “accident”. This term is defined in Section 1 to include a “. . . wilful and intentional act, not being the act of the worker . . .”, and a “. . . fortuitous event occasioned by a physical or natural cause”. This is not an exclusive definition of the term, but the word has been interpreted in its normal meaning of a traumatic incident. It has not, for example, been extended to cover injuries resulting from a routine work action or a series of such actions lasting over a period of time. The broad interpretation given to the term “accident” for the purpose of Section 4(1) of the *Government Employees Compensation Act* does not apply to Section 5(4) of the B.C. Act. (1)

#### **#14.20 Occurrence or Non-Occurrence of a Specific Incident**

Where an injury occurs at work as a result of any traumatic experience or external cause, it is usually from an accident to which the presumption in Section 5(4) applies. Thus, once it is established that the injury was caused by accident, and that the accident arose in the course of employment, the injury is presumed to have arisen out of the employment unless there is affirmative evidence that the injury was caused by factors external to the employment.

Consider the example of a worker who slips on the floor at work and is injured. Of course the worker could have slipped elsewhere and suffered a similar injury, but the worker didn't. The injury resulted from an accident in the course of employment. It is therefore presumed to have arisen out of the employment, and the injury is compensable, unless there is affirmative evidence that it was caused entirely by factors extrinsic to the employment.

Where there is no “accident”, there is no presumption under Section 5(4) and the evidence must support a conclusion that the injury arose out of the

employment as well as a conclusion that it arose in the course of the employment.

It is not a bar to compensation when an injury occurs over a period of time rather than resulting from a specific incident. To be compensable, however, the evidence must warrant a conclusion that there was something in the employment that had causative significance in producing the injury. A speculative possibility that this might be so is not enough.

This does not mean that the presence or absence of a specific incident is never relevant in the decision of a claim for compensation. What it does mean is that the absence of a specific incident is not of itself ground for denying a claim. The existence of a specific incident may still be relevant in that:

1. There are some disabilities that are classified as resulting from an “injury” if they arise out of a specific incident, but are classified as resulting from a “disease” if they occur over time. (2)
2. The etiology of a disabling condition is always relevant, and the presence or absence of a specific incident may have some evidentiary value in establishing whether it was caused by any feature of the employment.

## **#15.00 NATURAL CAUSES**

It is necessary to distinguish between injuries resulting from employment (which are compensable), and injuries resulting from purely natural causes (which are not compensable).

An injury is not compensable simply because it happened at work. It must be one arising out of and in the course of employment. If it happened at work, that usually indicates that it arose in the course of the employment. But it must also have arisen “out of” the employment. This means that there must have been something in the employment relationship or situation that had causative significance in producing the injury.

But if the injury was one arising out of purely natural phenomena – the internal workings of the human body – the employment situation may then be an irrelevant coincidence, and if so, the injury is not compensable.

### **#15.10 Worker Has Pre-existing Deteriorating Condition**

There may be cases where an organ of the body is deteriorating, possibly through disease, and it has reached a critical point at which it is likely to become a manifest disability. Some immediate activity might trigger the final breakdown.

But if it had not been one thing it would most likely have been another, so that it is only chance or coincidence whether it happened at work, at home, or elsewhere. The disability is one that the claimant would not have escaped regardless of the work activity, and hence the causative significance of the work activity is so slight that the disability is treated as having resulted from the deteriorating condition. The disability is the result of natural causes and is not compensable. A Board decision illustrates the point:

“An office worker goes to work at an office that is located above a store. He walks up one flight of stairs to his office and has a heart attack at the top. The evidence indicates a deteriorating condition of his heart. It indicates that a heart attack would not be unexpected and could be brought on by any activity at all. The disability is the result of natural causes and is not compensable.”

On the other hand, there may be other cases where the deteriorating condition was such that, in the absence of some exceptional strain or other exceptional circumstance, it was not likely to reach a critical point and become a disability about the time of the work injury. The worker could well have survived without disability for months or years if something exceptional in the course of his employment had not triggered the disability. Here the employment situation had substantial causative significance and the disability is compensable. An illustration of the point comes from a Board decision which stated in part:

“A transportation worker is moving a 300 lb. load up a flight of stairs when the load slips, causing fright and strain. The worker has a heart attack. Again the medical evidence indicates a deteriorating condition of the heart. But it supports a conclusion that the worker could well have survived for months or years without a heart attack had it not been for this unusually strenuous experience. Here the employment situation appears to have had causative significance and the heart attack is compensable.”

It is sometimes said that an event at work “triggered” the disability. This does not, however, determine whether the disability is compensable. The circumstances, including the condition of the worker, must be investigated in such cases to determine which of the above applies.

## **#15.15 Firefighters and Heart Injury**

The physical tasks involved in extinguishing fires and performing related rescue and hazardous materials responses expose firefighters to risks that are often unique to their profession. In this section the term “firefighter” refers to workers whose actual duties involve extinguishing fires and/or performing related rescue and hazardous materials duties. This section does not apply to workers employed in the firefighting profession who do not perform such duties. Evidence that a worker’s job description includes the performance of such duties does not in itself render the worker a firefighter for the purposes of this section.

If during or within twenty-four hours immediately following attending a fire, rescue, or hazardous materials response the firefighter experiences:

- the onset of chest pain, collapse, cardiac arrest, or death due to myocardial infarction (heart attack); or
- the onset of symptoms, collapse, cardiac arrest, or death associated with an episode of acute cardiac arrhythmia;

a strong inference will arise that such condition was caused by the employment where during the course of attending such fire, rescue, or hazardous materials response the firefighter was exposed to:

- an intense physical effort sufficient to cause significantly increased heart rate and arterial blood pressure, or
- high temperatures and/or the wearing of personal protective equipment that significantly affected the firefighter's ability to thermo-regulate or that caused the firefighter to undergo intense physical effort, or
- environments containing asphyxiants such as carbon monoxide, carbon dioxide, or hydrogen cyanide, and that are likely to have produced oxygen deficiency in that firefighter.

The commencement of such twenty-four hour period begins when the firefighter leaves the scene of the fire, rescue, or hazardous materials response. Against this inference must be weighed any evidence which suggests that such cardiac condition is due to non-occupational factors. However, it is recognized that in rare cases the onset of symptoms associated with such cardiac condition may first occur between twenty-four and forty-eight hours following the above-described occupational exposure(s). Where the onset of such symptoms first occur more than twenty-four hours after the firefighter leaves the scene of the fire, rescue, or hazardous materials response, consideration is given to any evidence which may account for such delay in onset. In particular, consideration is given to all relevant clinical records, including hospital reports, that document the worker's condition.

Generally, the Board will determine that the firefighter's condition is not causally associated with the employment where the onset of symptoms, collapse, cardiac arrest, or death due to the above-described cardiac condition occurs:

- more than forty-eight hours following the time when the firefighter left the scene of such fire, rescue or hazardous materials response; or
- during or immediately following the performance of non-occupational activities that are likely to have caused the firefighter to experience significantly altered cardiovascular or respiratory function.

Against this inference must be weighed any evidence which supports the claim.

Where one of the above-described conditions is determined to be compensable, the Adjudicator must determine whether the worker was suffering from a pre-existing or underlying condition such as coronary artery disease. See #15.00, #15.10 and #30.70. Time loss and health care expenses that are solely attributable to treatment of the pre-existing or underlying condition through such interventions as angioplasty, coronary bypass and/or medications, are compensable only in circumstances where the pre-existing or underlying condition is compensable. Consideration will also be given to proportionate entitlement under Section 5(5) and to relief of costs under Section 39(1)(e) of the *Act* (also see #113.20 and #115.30).

See #7.10 regarding volunteer members of a fire brigade.

### **#15.20 Injuries Following Motions at Work**

This heading refers to cases where an injury has followed a motion at work, but there was no deteriorating condition to bring the case within #15.10.

If a job requires a particular motion, and that motion results in injury, that is an indication that the injury arises out of the employment and is compensable. An example of this principle is a Board decision where the claimant's injury resulted from bending down and, for this worker, bending down was a required movement of the job. Another Board decision illustrates the point as follows:

“An automobile mechanic working under a car is bending himself in unusual ways when he turns his head to look at something. Through some unusual movement of the neck muscles, he suffers a muscle strain. The employment activity may well have had causative significance and the injury is therefore compensable.”

The same applies where a job requires a series of different motions, and an injury results from the series.

On the other hand, there may be situations where an injury resulted from some motion of the human body that was not required as part of the job. This would be an indication that the injury would not be compensable. Suppose, for example, that on walking along a road on an industrial site in the course of employment, a worker's head turns sideways as a matter of curiosity to see what someone is doing. Because of some peculiar movement in the neck muscles, a muscle strain occurs. That would not be an injury “arising out of” the employment, and therefore not compensable. Again, suppose a worker is using the toilet at work and, in doing so, suffers an injury resulting only from the bowel movement. That would not be compensable.

The injury may result not from any particular motion at any particular time and place, but rather from repetition of the same kind of motion over time, perhaps several weeks, perhaps several years. If the motion is one that the worker

undertakes in the course of employment, or predominantly in the course of employment, this would be an indication that the resulting injury would be compensable. But if the motion is of a kind that is undertaken at home and in the worker's social life as well as at work, this would be an indication that the resulting injury was not compensable. This point is illustrated in another Board decision:

“If the injury is one that resulted from the natural condition of the worker together with the general activities of life, it would not be compensable simply because work was one of those activities. To be an injury arising out of the employment, there must be something in the employment that had a particular significance in producing the injury. For example, if a claimant has an injury to his knee and medical evidence indicates that this is caused by the use of stairs, it would not be compensable simply because the claimant uses stairs at work as well as at home and elsewhere.”

It may often, in practice, be difficult to distinguish between work-required and non-work-required motions. Moreover, a work-required motion will often be a motion which the worker commonly engages in at home. This would suggest that the illustrations set out above are contradictory. However, the point is that it is not enough to consider only whether the motion is one which is undertaken at home, or only whether the motion was required by the worker's job. Illustrations are not intended to be substitutes for the exercise of judgment.

On the one hand, it is said that it should be sufficient to show only that the injury came on while the claimant was at work. The difficulty with this argument is that it renders meaningless the first half of the test contained in Section 5(1). If causation is to be measured solely by the fact of employment, why did the Legislature include a requirement that the injury must also “arise out of” the employment? Clearly something more is required.

On the other hand, it has been suggested the Board should disallow any claim for compensation where the motion which caused, or apparently caused, the injury is one which occurs constantly in the course of daily living. This argument would inevitably lead to absurd conclusions. Very little physical activity or body movement in a worker's employment differs significantly from that at home. The result is that virtually every body motion or activity could be said to be “normal” or “natural”, capable of occurring off the job and therefore non-compensable. Clearly something less restrictive is required.

Claims of the kind under discussion here must be adjudicated with great care. Nevertheless, the necessity for the exercise of judgment will result occasionally in what may appear to be inconsistency or the application of slightly different criteria. This is inevitable in any situation where it is virtually impossible to draw a line. It is not advisable nor just to state that claims for injuries without accident can only be accepted where there was some demonstrable act on the part of the

claimant which was so directly connected with work that the relationship is indisputable. In particular, the present inability of medical science to accurately pin-point the etiology of a great variety of spinal problems, many of which have been shown to arise from the most trivial of incidents, leads to a conclusion that, in appropriate circumstances, such incidents should be seen as causative and if they occur while at work, the resulting injury must be compensable. On the other hand, the simple act of walking up stairs or turning one's head to speak to a co-worker or of looking down at one's hands while performing a certain job, fall so clearly into the realm of "natural" or "normal" bodily functions that the only connection between them and the employment is the coincidental fact that the worker was on the job at the time.

Simply by adding a few more facts to these situations or others it might well be possible, in individual cases, to find that a work relationship existed. For example, (and these examples are not to be taken out of context without consideration of the discussion above), if the worker were forced into an awkward position in order to properly perform the job and either while in that position or when arising from it suffered a sudden and severe onset of pain and discomfort, and the evidence shows no previous difficulty, it might well be that the only reasonable conclusion is that the apparently minor incident was causative. Similarly, if a worker bends to pick up an object, and that motion is required by the job (e.g. a piece of debris while on clean-up, a piece of mail while working in the mail room, an item of equipment or machinery in a plant) and, unrelated to the lifting of the object, suffers an onset of disabling pain, that apparently insignificant motion might also establish some work relationship. In either of these cases, the motion although natural was performed as a matter of the worker's duties and may in that sense gain "work" status.

### **#15.30 Recurring Temporary Disabilities**

This refers to cases where a worker is subject to recurring disabilities of a temporary nature whether at work or elsewhere. A common example would be a worker who is subject to epileptic fits. Illustrations of the principles are:

1. A worker suffers an epileptic fit and is injured when hitting the floor. Both the fit and the injury result from natural causes and neither is compensable.
2. A worker suffers an epileptic fit, falls twelve feet from a scaffold, and suffers injuries on impact with the floor. Here the employment situation resulted in injuries beyond those that might have flowed from the natural causes, and though the fit itself is not a compensable injury, the injuries resulting from the fall from the scaffold are compensable.

The fit results from natural causes, and injuries resulting from the fit are not compensable. But if the employment situation results in injuries beyond those

that might have flowed from natural causes, the additional injuries resulting from the employment situation are compensable.

Where a claim is allowed for an injury substantially due to a personal illness of the worker such as epilepsy, the costs are excluded from the employer's experience rating (see #115.30).

#### **#15.40 Ganglia**

Ganglia are generally not considered to be of traumatic origin. As such, most claims for these conditions are not deemed to have resulted from a worker's employment and are not acceptable.

Exceptions may be made when:

1. a ganglion first appears between six weeks and six months following a deep penetrating wound or a contusion involving deep tissue damage at the site where the ganglion appears, or
2. a ganglion appears within six weeks of commencing work which is both unaccustomed and involves repetitive movements of joints or tendons at the site of the ganglion. This is considered an aggravation of the ganglion in a pre-disposed individual.

#### **#15.50 Herniae**

For all decisions, including appellate decisions, made on or after June 1, 2004, please refer to policy item #15.50, *Herniae*, in Volume II of the *Rehabilitation Services & Claims Manual*.

On the basis of the Board's present understanding of the biologic characteristics of herniae, the following principles are followed to determine the acceptability of hernia claims. It is, of course, essential that the claimed work causation circumstances should be reported to the employer as soon as is practicable.

1. Direct Inguinal Herniae
  - (a) There must be increased intra-abdominal pressure or evidence of severe direct trauma resulting from the work or employment preceding the appearance of the hernia.
  - (b) There should be no prior hernia at the site.
  - (c) The age or general physical state of the claimant should be such as to predispose to the formation of a direct hernia.

- (d) Pre-operative wage loss will not be allowed without adequate medical explanation of the reasons.
- (e) Post-operative wage loss will be limited to 42 calendar days unless there are complications which justify an extension of the convalescent period and which are adequately described by the attending physician. The Board may require a further examination.
- (f) The hernia will be considered to be an aggravation of a pre-existing condition and surgery will be recognized as an attempt to correct the aggravation.

## 2. Indirect Inguinal Herniae

- (a) There must be increased intra-abdominal pressure resulting from the work or employment preceding the appearance of the hernia. The hernia should follow this event within a reasonable time period, normally no more than 72 hours.
- (b) Where a claimant suffers bilateral herniae, it is extremely unlikely that both will have resulted from the same incident. However, where a claim for one of those hernia is acceptable in accordance with the principles set out above, the Board will accept responsibility for both herniae if the evidence is such that it is not possible to determine which of the two herniae did result from the employment.
- (c) The hernia will be considered to be an aggravation of a pre-existing condition and surgery will be recognized as an attempt to correct the aggravation.
- (d) Pre-operative wage loss will not be allowed except under unusual circumstances which are fully detailed by the attending physician.
- (e) Post-operative wage loss will be limited to 42 calendar days except where there are complications which are fully explained by the attending physician. The Board may require a further examination.

In the case of inguinal herniae, sometimes the surgery must be done urgently because of certain threatening complications such as bowel obstruction or inability to reduce the hernia. Most often there is no urgency about the operation and seldom is there need to stop work while awaiting surgery. There is no medical evidence to suggest that work generally aggravates a hernia, makes the surgery more difficult or less successful, or increases the complications following surgery.

Where a treating physician's report certifies to the Board that the worker is disabled pre-operatively, other objective evidence regarding the worker's condition will be sought to either verify or dispute the treating physician's opinion. Usually this would consist of a medical examination at the Board.

When the first document is received on a hernia claim, a letter is immediately sent to the worker which states in part:

"Please call (the Board) immediately if your doctor has told you to stay off work."

If the document indicates that the claimant is off work due to the hernia, the worker is also contacted by telephone by the Adjudicator to advise that the Board does not normally pay pre-operative wage loss on hernia claims. The adjudication of the claim is then accelerated. This could involve a telephone call to the employer to obtain the necessary information on which to base a decision.

Immediately following acceptance of the claim, if the claimant is still off work, the file will be discussed with a Board Medical Advisor, who should examine the claimant promptly if the question cannot be resolved by contacting the attending physician or surgical consultant. If the Board Medical Advisor confirms that the worker is not disabled, the worker is so advised at that time by the Adjudicator. This verbal decision is confirmed in writing. Wage-loss compensation will then only be paid up to the date of the examination, but will be reinstated as of the date of admission to hospital for surgery. The Board Medical Advisor may use discretion in such cases and decide to contact the treating physician to discuss the matter.

After surgery, the operative site usually heals without difficulty. Return to work in uncomplicated cases will be governed to some degree by the nature of the work to be done but is usually possible in four weeks. Some complications may delay this return to work.

### 3. Femoral Herniae

These are unusual herniae and are generally not related to effort but may follow increased intra-abdominal pressure. Similar considerations will pertain as for inguinal herniae.

### 4. Epigastric Herniae

These are not generally secondary to trauma or strain.

## 5. Incisional Herniae

- (a) If the primary incision is not the result of a compensable condition, the claim should be considered as a new claim and there should be:
  - (i) an incident causing severe direct trauma to the site of the incision or marked increase in intra-abdominal pressure;
  - (ii) the appearance of a hernia shortly after the occurrence of the trauma or incident;
  - (iii) the incident or trauma should be reported to the employer as soon as is practicable.
- (b) If the primary incision is the result of a compensable condition, the claim should be considered as part of the original claim unless there has been a significant new trauma. If there has been significant new trauma, a new claim should be established.

## 6. Diaphragmatic and Hiatus Herniae

These herniae should only be considered for compensation purposes if:

- (a) there has been a severe crushing injury to chest or abdomen; or
- (b) there has been direct trauma to the diaphragm (gunshot wound, stab wound, etc.) at the site of the hernia.

## 7. Internal Herniae

These are not considered to be related to effort, strain or work and are not compensable.

## 8. Umbilical Herniae

These are clearly congenital herniae and are not related to stress, strain, work effort or trauma, except in most unusual circumstances.

## 9. Incarceration of Herniae

Incarceration of hernial contents may occur during effort in a claimant with a prior hernia. The Board responsibility in this case is limited to relief of the incarceration, usually possible by manual manipulation. If manual manipulation is unsuccessful, however, surgery may be necessary and if it is necessary for relief of incarceration, it is a Board responsibility.

**EFFECTIVE DATE:** June 1, 2004  
**APPLICATION:** Applies to all decisions, including appellate decisions made on or after June 1, 2004.

**#15.51 *Prior Compensable and Non Compensable Herniae***

1. Prior Compensable Herniae

(a) Under 18 Months Since Claim Closed

If no new incident is reported the Board may reopen the decision where a ground for reopening is met (see Chapter 14).

If a significant new trauma is reported, it is usually adjudicated as a new claim.

(b) Over 18 Months Since Claim Closed

This is generally adjudicated as a new claim and is decided on the merits of the case. This consideration, however, also includes evaluating the question of reopening the old claim. The claim can only be reopened where a ground for reopening is met (see Chapter 14).

2. Prior Non-Compensable Herniae

(a) Under 18 Months Since Prior Herniae

These are adjudicated on the merits of the case. Because of the potential for recent hernia repairs to break down, it is expected that to be acceptable there must be clear evidence to establish a relationship of the breakdown to the worker's employment.

(b) Over 18 Months Since Prior Herniae

These are adjudicated on the merits of the case.

**EFFECTIVE DATE:** March 3, 2003 (as to references to reopening)  
**APPLICATION:** Not applicable.

## **#15.60 Shoulder Dislocations**

Where a worker has previously had a primary shoulder dislocation and suffers a further, or recurrent dislocation at work, if the original or primary dislocation was not sustained as a compensable injury, its acceptance as a new claim would depend upon whether there was a work incident of sufficient causative significance to induce a further dislocation. If there is a prompt reduction of the recurrent dislocation, there may be no disablement from work and consequently no need for wage-loss benefits. Where there is a disablement, this should not normally endure more than two weeks. Surgery, if directed at the pre-existing primary cause of the recurrent dislocation, would not normally be considered as an entitlement. An exception to this principle could arise where there was a non-compensable dislocation many years previously and evidence shows that the shoulder had been stable for many years without any recurrent dislocation or where the recurrent dislocation at work was induced by **severe** trauma. In such a case, entitlement might not be limited to the same extent and could include surgical repair.

Where the primary dislocation was compensable, should surgery be undertaken, it would normally be handled under the original claim unless the condition has been stable for many years with no intervening difficulty or the recurrent dislocation at work was induced by **severe** trauma. In such circumstances the surgery may be dealt with under the new claim.

## **#16.00 UNAUTHORIZED ACTIVITIES**

The mere fact that a worker's action which leads to an injury was in breach of a regulation or order of the employer or for some other reason unauthorized by the employer does not mean that the injury did not arise out of and in the course of the employment. On the other hand, there will be situations where the unauthorized nature of the worker's conduct is sufficient to take the worker out of the course of employment or to prevent an injury from arising out of the employment.

### **#16.10 Intoxication or Other Substance Impairment**

Since it is seldom possible to have blood alcohol level or other test data available in adjudicating such claims, other evidence is used to evaluate the existence and extent of any impairment.

Claims involving impairment should be classified under the following headings.

1. Workers Permitted to Drink

There may be cases where drinking was part of the permitted activities of the employment. For example, bartenders or other kinds of sales representatives may have been encouraged or permitted by their employers to drink with customers. In that kind of case, any injury resulting from intoxication would generally be compensable. But there may well be exceptions, for example, where it is concluded that the worker had gone beyond the pursuit of the employer's interests to engage in a purely social event.

2. Workers Not Permitted to Drink

Where drinking is not a permitted part of the employment, injuries resulting from intoxication or other substance impairment must be adjudicated as follows:

(a) Employment causation

If the injury arose in the course of the employment, and something in the employment relationship had causative significance in producing the injury, it is still one arising out of and in the course of employment notwithstanding the impairment. Examples are where an intoxicated sailor fell into the water while attempting to board a vessel, and where a forest industry worker was run over by a logging truck. In these kind of cases, if the injury results in death or serious or permanent disablement, it is compensable.

Once it is apparent that an injury is one arising out of and in the course of employment, it does not cease to be so merely because some other factor, extrinsic to the employment, also has causative significance. An industrial injury is often caused, for example, by inattentiveness due to nausea, depression, lack of sleep, or a variety of other factors. But it is still compensable.

(b) No employment causation

There may be cases where, although the injury occurred at work, impairment alone was the cause. Suppose, for example, a worker is walking over normal ground when, unable to maintain support as a result of impairment, stumbles to the ground and is

injured in the fall. In that case, it might appear that nothing in the employment relationship had any causative significance in producing the injury. It would then not be an injury arising out of the employment and not compensable. Also, as indicated in #16.60, a worker's actions or conduct may induce the Board to conclude that the injury did not arise out of and in the course of the employment.

## **#16.20 Horseplay**

A worker who is injured through participation in horseplay is not for that reason alone denied compensation. The conduct of the claimant which caused the injury must be examined to determine whether it constituted a substantial deviation from the course of the employment. An insubstantial deviation does not prevent an injury from being held to have arisen in the course of employment.

No definite rules can be laid down as to what constitutes a substantial deviation. One factor to be considered is the degree of participation of the claimant. For instance, a claimant who instigates or provokes horseplay, or who has been involved in previous episodes of horseplay, will more likely be considered to have made a substantial deviation than one who simply reacts to actions commenced or provoked by someone else.

The duration and seriousness of a claimant's horseplay is also of relevance in considering whether there has been a substantial deviation from the course of 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. As Larson notes,

“At the other extreme, there are cases in which the prankster undertakes a practical joke which necessitate the complete abandonment of the employment and the concentration of all his energies for a substantial part of his working time on the horseplay enterprise.” (3)

When this abandonment is sufficiently complete and extensive, it must be considered a substantial deviation from the course of employment. It is also relevant to consider whether the “horseplay” involved the dropping of active duties calling for the claimant's attention as distinguished from the mere killing of time while the claimant had nothing to do. The duration and seriousness of a deviation from the course of employment which will be called substantial will be somewhat smaller when the deviation necessitates the dropping of active duties than when it does not.

## **#16.30 Assaults**

In considering cases of assault, the first question is whether the claimant was the aggressor and therefore the agent which caused the injuries. The answer to this question is not always clear cut and may involve an evaluation of the degree to which a claimant is an aggressor in a given situation. However, the fact that a claimant is less than friendly with another employee and is at least equally responsible for ill feeling that may prevail between them is not, by itself, grounds for disallowing a claim for injury arising out of an assault by that other employee.

The second question is whether there is a connection between the employment and the subject matter of the dispute which led to the assault or whether it was a purely personal matter. In the latter case, the claim is not acceptable.

Where an assault arises out of the worker's employment, no compensation is payable unless it also arises in the course of the employment.

The same principles apply if the assault is by someone other than a fellow employee.

## **#16.40 Injury While Doing Another Persons Job**

Some latitude must be given to workers to act upon their own initiative. It is clearly impossible for an employer to lay down fixed rules covering every detail of a worker's employment activity. Therefore, workers may be uncertain as to the limits of their work. A worker should not be prejudiced if the worker is careless or exercises bad judgment in an area where it is reasonable to exercise some discretion. Thus an act which is done bona fide for the purpose of the employer's business may form part of a worker's employment, even if not specifically authorized by the employer. For example, it has long been the policy of the Board to accept claims from workers injured as the result of some emergency action to protect their employer's property or to rescue their fellow workers. Suppose also that a worker, who has ceased to work at a particular machine, goes to the aid of a successor who is having trouble operating the machine. One would expect that the employer would not want the worker to refuse to assist the new employee on the technicality that it was not within the scope of the worker's employment.

On the other hand, there is a clear need to place some limit on the activities which form part of a worker's employment. Thus, for example, if an 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 other persons' jobs, the worker would not usually be covered merely because of a bona fide action for the benefit of the

employer. On the other hand, it might be different if, for example, the employer had previously condoned a prohibited practice carried out by employees or some emergency forced a worker to act.

If a worker performs some work activity without the employer's instructions, this is an indicator that any resulting injury did not arise out of and in the course of the employment. On the other hand, this factor does not exclusively determine the compensability of the injury. It must be weighed along with the other factors set out in #14.00 and any other relevant factors. If it is outweighed by other indicators that the injury arose out of and in the course of the employment, the injury will be compensable under the Act.

### **#16.50 Emergency Actions**

Where an emergency occurs at a time when a worker is in the course of employment, the worker is considered to be covered if injured when acting to protect a fellow worker or protect the employer's property. If, however, the action is that of a public spirited citizen, she or he would be doing no more than anyone would do, whether or not working for an employer at the time. This cannot be considered to be related to the employment.

However, there is an exception to this general proposition, notably where the injury occurs through the presence of a hazard on the premises of the employer.

The situation can perhaps best be illustrated by an example. Suppose a 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, trips over his or her own feet, 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. In other words, it would be found to have arisen out of the employment.

Suppose, then, that the same 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. In these circumstances there is no relationship to the employment. The reason for the worker's departure is totally unrelated to the employment and nothing about the employment contributed to the injury. However, if the worker were to race from the office and trip over a poorly laid carpet, a relationship to the employment would be present. In other words, the injury would not have occurred had it not been for a hazardous condition on the employment premises.

Therefore, while it is incorrect to say that compensation will be payable when a worker is injured while leaving the premises of the employer for whatever reason, it is correct to say that any injury will be compensable which was suffered in any emergency and which also arose out of a hazard on the employment premises.

Even if the injury does not arise from a hazard of the employment premises, and the emergency does not concern a fellow worker or the employer's property, claims may still be accepted from workers who, in the ordinary course of their work, are situated in an environment which by its very nature may become the site of an emergency situation. An excellent example of this "positional risk" would be all employees in the various aspects of the operation of an airport. The Board is of the understanding that, for example, at Vancouver International Airport groups or "teams" are formed to act in cases of emergency. The members of these groups will be drawn from various aspects of the operation and the nature of their specific employment may be totally unrelated to emergency rescue. Baggage handlers or concession operators could not be considered to have as part of their employment the need to react in the event of a crash of an aircraft. Nevertheless, their very presence as employees at the airport places them in the position of being the logical choices to become members of such teams. Apart from this exception, the fact that the employment places one in a position to observe an emergency cannot be of itself a determinative factor in granting compensation.

If a worker's injury is the result of an emergency action to prevent a crime, there may be entitlement to benefits under the *Criminal Injury Compensation Act*. (4)

### **#16.60 Serious and Wilful Misconduct**

Section 5(3) provides that "Where the injury is attributable solely to the serious and wilful misconduct of the worker, compensation is not payable unless the injury results in death or serious or permanent disablement."

By the terms of Section 5(3), the injury must be attributable "solely" to the worker's misconduct. Thus, for example, where the worker was impaired by reason of alcohol or other substances, investigation will have to be carried out to evaluate the extent of the impairment and its degree of responsibility in producing the injury in order to establish whether this requirement is met. See #16.10 for further details.

The section only applies where the misconduct was serious and "wilful". In determining whether misconduct is wilful it must be considered whether the claimant had pre-knowledge or voluntarily elected to break a rule. In other words, the claimant must be aware of a rule and knowingly elect to break it.

The section does not bar a claim if the injury results in death or serious or permanent disablement. The word "serious" is used in a physical rather than an economic sense. Therefore, if for example a worker has suffered a sprained wrist or finger which causes only two or three weeks loss of wages, this may not be considered as a serious disablement even though the loss of earnings may cause a serious financial problem. However, if a disability is prolonged, it may be regarded as serious even though the initial injury appears minor.

Where a claim involving serious and wilful misconduct is accepted, the cost of compensation paid after the first 13 weeks of disability is excluded from the employer's experience rating (see #115.30).

Before Section 5(3) can be considered, it must have been determined under Section 5(1) that the injury arose out of and in the course of the employment. The actions or conduct of the worker may induce the Board to conclude that the injury does not meet that requirement. If such a conclusion is reached, the claim will be denied even though the worker has suffered death or serious or permanent disablement.

## **#17.00 HAZARDS ARISING FROM NATURE**

An injury may result from natural elements. For instance, a worker may be stung by an insect or plant or suffer from exposure to extreme weather conditions. Compensation in these cases is limited to situations where the job is of such a nature as to place the worker in a greater position of hazard to these elements as compared with the public at large.

Some examples of the application of this rule are set out below.

### **#17.10 Insect Bites**

A logger stung while working in the bush would have a claim accepted, as would a letter carrier who is stung while walking through a flower garden in summer to deliver a letter. Claims have also been accepted from people bitten by tropical insects while unpacking bananas.

On the other hand, an office worker stung by a bee in the course of office work would not generally qualify.

### **#17.20 Plant Stings**

An employee of a florist shop is an obvious example of a person who could successfully claim for a plant sting.

## **#17.30 Frostbite, Sunburn and Heat Exhaustion**

If a worker is working outdoors in below freezing temperatures and sustains frostbite, a claim will qualify for acceptance as resulting from a work related hazard. The same would apply to a worker working for a prolonged period in a walk-in freezer.

Persons suffering abnormal exposure to the sun because of their employment are also covered.

The failure of a worker to wear protective clothing may in some cases be ground for denying a claim under Section 5(3).

## **#17A.10 Commencement of Employment Relationship**

The commencement of compensation coverage is not marked by common law principles relating to the commencement of a contract of service. A decision must be made whether, having regard to the substance of the matter, an employment relationship had begun for compensation purposes.

For example, where the place of employment is some distance from the available labour market, workers may arrive at the place of employment in a number of ways. If workers go there of their own initiative looking for whatever jobs they may find, they take the risk of travel upon themselves. But if an employer extends its network of hiring arrangements to distant places, and induces a worker to leave a distant city and journey to the employer's place of work upon the promise of travel time and expenses, the journey becomes part of the employment relationship, and the hazards of the journey become risks of the employment.

A person offering services to an employer will often be told to come back at a certain time in the future when work might be available. A person may also be promised a specific job but the commencement date may be specified some weeks or months ahead. Such persons would not normally commence to be workers under the *Workers Compensation Act* until they actually returned to the employer's premises at the future date and commenced work.

It is not essential that a person must actually have commenced productive work for an employer before being covered. If, for example, an injury took place while entering the employer's premises on the way to the first day of work the worker may be covered. The employment relationship would have commenced at the moment of entry to the premises and would not have been delayed until completion of the necessary hiring formalities or actual commencement of work. Coverage might even commence earlier in the journey to work that morning if the situation falls within one of the other exceptional cases when travelling to work is regarded as part of the employment.

## **#17A.20 Termination of Employment Relationship**

The same principles apply to the termination of employment as to the commencement of employment. An employment relationship does not automatically terminate for compensation purposes when a contract of service is terminated by notice. Workers are covered for a reasonable period while winding up their affairs and leaving the employer's premises.

## **#18.00 TRAVELLING TO AND FROM WORK**

The general position is that accidents occurring in the course of travel from the worker's home to the normal place of employment are not compensable. But where a worker is employed to travel, accidents occurring in the course of travel are covered. This is so whether the travel is a normal part of the job or is exceptional.

### *#18.01 Entry to Employers Premises*

Compensation coverage 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. Thus where a worker is travelling to work by automobile, there is no coverage for compensation from home to the point of entry to the employer's premises, but there is coverage from there to the worker's particular place of work. However, a Board decision denied a claim from a worker who, having entered her employer's premises and decided not to cross a picket line, was injured before she had left those premises as the result of tripping over a cement abutment.

It is a responsibility of the employer to provide a safe means of access to and egress from the place of work. Thus where a worker is travelling by highway to a place of work that is not adjacent to the highway, and must cross other land before reaching the employer's premises, compensation coverage begins at the point of departure from the highway rather than the point of entry to the employer's premises.

It is not considered significant that a worker is injured while seeking to gain access to the employer's premises by a method that is probably different from that which the employer intends. In a Board decision, it was irrelevant that the deceased fisher attempted to jump aboard his employer's boat rather than use a ladder that was available. However, the outcome might be different if the method used has been specifically forbidden by the employer and the worker is aware of this.

The worker in that decision was attempting to board the ship to sleep there in preparation for sailing the following day. It was not significant whether he was required to board the ship the night before, or whether he had an option about the time of boarding. He was in any event attempting to board the ship for the purpose of work the following day.

## **#18.10 Road Leading to Employers Premises**

The general rule is that there is no coverage while a worker is travelling along the roads which lie between the worker's place of residence and the employer's premises. However, in some cases, the nature of the road leading to the employer's premises may give coverage while on that road.

### *#18.11 Captive Road Doctrine*

A "captive road" is one which is technically a public highway but as a practical matter leads only to the premises of the particular employer and is for practical purposes under the control of that employer. In such a case, the road might be classified as part of the employer's premises for compensation purposes. The case would be particularly strong if it was found that the employer made decisions on repairs. In a Board decision, the application of this doctrine was rejected because the road in question was used by at least three employers.

In another Board decision, a miner was killed in an automobile accident while driving home along the road leading from the mine where he worked. The mine was located in a park, 27 miles from the main road. The road also gave access to a public camp ground, 17 miles from the main road, and another work place of the same employer, 23 miles from the main road. There was no other highway access to the mine, and it was normal for workers of the employer to travel by automobile along the road. The claim was allowed on the grounds that the road was a "captive road" at the point where the accident occurred, 24 miles from the main road. The question whether the "captive road" terminated at the access to the public camp ground or the main road was left open.

It appeared that the title to the road vested in the Crown, and that it was probably a public highway right to the mine site. Both the Department of Highways and the employer participated in the original construction of the road. Since that time, however, the Department of Highways had not participated in the operation of the road. The Department of Highways had not placed its usual hazard signs on the road, nor had it participated in maintenance. Through its relations with the Crown, the employer appeared to be under a legal obligation to maintain the road from the mine to the boundary of the park (seven miles from the main road), but in practice, it maintained the road all the way to the main road.

There was evidence that the public did use the road right up to the mine, but this use was by occasional tourists going nowhere in particular or by people looking for fishing spots. This limited use by the public was not inconsistent with the "Captive Road Doctrine".

In another case, the claimant was injured in a motor vehicle accident while travelling from home along a private road owned, controlled and maintained by the employer. The argument that it was a "captive road" was rejected because the road also led to the plants of several other employers and a public recreation area which were located further along the road than the plant of the claimant's employer. The use of the road by the public up to and beyond the employer's plant was significant. The further argument, that the claim should be accepted because the road formed part of the employer's premises, was also rejected. While it was agreed that, generally speaking, injuries occurring on the employer's premises were compensable, it was not accepted that the extent of the employer's premises for this purpose could simply be determined by whether the employer legally owns or controls the property in question. To take an obvious example, there would be no coverage if an employee were injured at the employer's home when invited there out of work hours on a purely social occasion. It is apparent, therefore, that regard must be had to other factors such as the use to which the land is normally put and its relationship to the operation of the employer's business.

The "Captive Road Doctrine" lays down situations when a road, though technically a public one, can, in effect, be regarded as part of the employer's premises for compensation purposes with the result that coverage extends to injuries occurring on it. This occurs when the road for practical purposes leads only to the employer's premises and can, therefore, be equated with a private road which is just an incidental feature to the employer's plant. The natural corollary of this doctrine is that, where a road is technically a private one, it should not be considered as part of the employer's premises where in reality it leads to the premises of several different employers and is indistinguishable from a public highway. The road is not then just an incidental feature of the plant of the one employer who happens to own the road. It appeared that roads leading to an employer's premises should be classified for compensation purposes by the real nature of their use and hazard. The Board should not be artificially distinguishing roads otherwise indistinguishable on the basis of legal ownership and control. It was concluded that the road concerned in this claim must in reality be considered as a public highway rather than a private road forming an adjunct to the employer's premises.

The Board's policy with regard to "captive roads" has never been that an injury occurring on such a road is compensable regardless of the circumstances of the injury. Just as an injury is not compensable just because it happens on the

employer's premises, an injury is not compensable just because it occurs on a "captive road". The circumstances surrounding the injury may indicate that, notwithstanding the place where it occurred, it did not arise out of and in the course of the employment. Therefore, a claim for an injury on a "captive road" was denied when the accident was due to the dangerous condition of the claimant's own vehicle.

An injury on a "captive road" does not arise out of and in the course of the employment if the journey along that road is not for a legitimate purpose associated with the employment.

### *#18.12 Special Hazards of Access Route*

Where a place of work is so located that for access and egress the worker must pass through special hazards beyond the ordinary risks of highway travel, an injury sustained from those hazards is one arising out of and in the course of employment. On the other hand, an injury to a worker on the way home from work, even though on the only egress route from the employer's premises, is not compensable if it results from other normal risks of highway travel, such as a collision between two automobiles.

In a Board decision, a dead-end street led to the employment premises of the claimant and other employers. The claimant was injured by a train while driving over a railway crossing situated close to the employer's premises on this road on her way home from work. Since this crossing differed from other crossings in the city and was of a type lacking typical safety features, it was a special hazard, and a claim in respect of the injury was allowed.

In another decision, it was argued that the accident resulted from a special hazard of the industrial environment, and therefore a hazard of egress from the employer's premises. In this connection, reference was made to the bends in the road being sharper in the mountains than was normal for lowland highways, to falling rock on the road, to crosswinds, and to ice patches in winter. While the evidence with regard to the existence of these conditions was accepted, they were seen as hazards of mountain highways rather than a special hazard of egress from this kind of work place. The claim was, therefore, not allowed under the special hazard doctrine. In another case, the argument was made that there were special hazards on the road to the employer's premises arising from poor road conditions due to snow. This was rejected because these conditions were no more than was to be ordinarily expected on any road during winter in the interior of the province.

For a claim to succeed on the grounds of a special hazard, the hazard need not lie on the only route to the employer's premises. It is sufficient if it is on the normal route to the place of work from the direction in which the claimant is travelling.

If a worker is injured in the immediate approaches to the place of work, though still on the highway, that will be compensable if the hazard causing the injury is a spill-over from the employer's premises. For example, if an accident occurs through rush hour congestion right at the gates of the plant, that would be compensable, and the Board would certainly not measure by an exact line whether it occurred inside or just outside the gates.

## **#18.20 Provision of Transportation by Employer**

An employer may directly or indirectly provide transportation for its employees' journeys to and from work. In situations where this involves providing a specific vehicle such as, for example, a crew bus, in which the journeys are made, compensation coverage is generally extended to injuries occurring while travelling in this employer-owned vehicle. In some situations, the employer may let the worker choose her or his own mode of transportation, but pay for all or part of the costs of this transportation. The employer may also pay the worker a wage for the time spent in travelling. While these factors must be considered, the basic question to be determined is whether or not the claimant is routinely commuting to or from work. The fact that coverage does not extend to include routine commuting could override the fact that the worker is being paid a travel allowance or a wage to cover the commuting. This is distinct from the crew bus situation described above which can be deemed to be an extension of the employer's premises.

### *#18.21 Provision of Vehicle by Employer*

In a Board decision, the claimant was injured while travelling to work on a bus run by a company pursuant to a contract between the company and the employer. The employer argued that the rule outlined above did not apply because the bus service was not provided directly by the employer, but through an independent contractor. The bus company had complete control over the service which was used by other members of the public than the employer's workers. Employees paid a fare for riding the bus and had a choice as to whether to use this means of riding to work. In effect, the service was being equated with any other regular bus service run for the purpose of public transportation.

The argument that this rule did not apply was not accepted. Leaving aside the fact that control by the employer is not a necessary factor before compensation coverage exists, it was considered that the employer did in that case exercise a significant degree of control over the bus service. It was, to begin with, a party to the contract which set out the terms and conditions on which the service operated. The contract also allowed the employer to direct the amount of the fare paid by its employees and to enact rules or regulations which applied to the

operation of the buses. The contract could be terminated by the employer on 90 days' notice. The bus service was not at all like a regular bus service open to the public. It was, in practice, used virtually exclusively by workers of the employer and another authorized company and its use by other members of the public was by comparison minimal and unofficial. The fares paid by the employees were nowhere near to covering the cost of the service which was met by the employer and appeared to be token in nature.

Though the bus service was not specifically provided for in the collective agreement, it was a matter which had been the subject of a separate agreement between the union and the employer. The reasons for a reduction in fares resulting from this agreement were not known, but clearly could have had nothing to do with the economics of providing the service. This agreement pointed to the fact that the bus service was not an independent body and separate service which the employer had induced another company to operate but, rather, a service provided by the employer through the agency of another company, which was subject to its overall direction and control. There was no justification for distinguishing this type of case from one where the company directly provide the service itself using its own employees.

The same rule was also applied where, because of working overtime, the claimant missed the regular bus service home provided by his employer. He was injured while travelling home in a taxi arranged and paid for by his employer and his claim for compensation was accepted. It made no difference that the collective agreement did not require the employer to provide the taxi.

This rule does not apply when the employer provides the worker with a vehicle for the purpose of work and allows personal use outside of work hours. An injury occurring while travelling in that vehicle to and from work will not be compensable just because the employer provided the vehicle. Nor would such an injury be compensable where the vehicle is the claimant's own just because it is taken to work in order to be used in the course of employment.

#### *#18.22 Payment of Travel Time and/or Expenses by Employer*

The payment of wages or travelling allowances etc. may in some circumstances be a factor to be considered, but it usually will not be a significant factor, nor is it ever the sole criteria in determining the acceptability of a claim.

Where the place of employment is some distance from the available labour market, workers may arrive at the place of employment in a number of ways. If workers go there of their own initiative looking for whatever jobs may be found, they take the risk of travel upon themselves. But if an employer extends the network of hiring arrangements to distant places, and induces a worker to leave a distant city and journey to the employer's place of work upon the promise of

travel time and expenses, the journey becomes part of the employment relationship, and the hazards of the journey become risks of the employment.

In the Lower Mainland area, stevedores are normally required to report to the hiring hall in Vancouver in the morning. They are then dispatched to the various employers in the area. When dispatched outside the City of Vancouver itself, for example North Vancouver, stevedores have the option of transportation in their own vehicle or to use a taxicab at the employer's expense. No similar allowance is made within the city limits of Vancouver. In view of this exceptional circumstance, stevedores are covered under compensation from the point when they leave the city limits in which the hiring hall is located while travelling to a work place outside the city limits, whether they use a taxicab provided by the employer or use their own vehicle. No coverage applies when travelling to destinations within the city where the hiring hall is located.

The remoteness of a work site and the limited availability of transportation are factors which may suggest that a journey from the work site may be part of the employment. There is a difference between a journey between two established towns and cities with regular and established means of communication and a journey between one such town and a remote place consisting only of a work site. The fact that a flight is a scheduled one does not fundamentally alter the more hazardous nature of the latter type of journey, though a scheduled flight system may possibly provide greater safety than an unscheduled one.

### **#18.30 Journey to Work Also Has Employment Purpose**

There may be situations where the journey is not simply a routine matter of driving to and from work, but there are also some additional circumstances which connect the journey with some particular aspect of the claimant's employment. This additional circumstance may be sufficient to bring all or part of the journey within the scope of the employment.

#### *#18.31 Worker On Call*

Workers are not covered while routinely travelling to and from work simply because as part of their contract of employment, they are liable to be called out from their homes at any time to deal with a matter connected with their employment. They are, however, covered if because of an emergency or some other reason they have to make a special journey from their homes to their employer's premises or to some other place where the job has to be done.

### *#18.32 Irregular Starting Points*

There are a number of different situations that have to be considered under this heading. One is where the worker is injured in the course of a journey between home and a normal or regular operating base. That situation is substantially similar to the case of a worker travelling between home and a fixed place of employment and an injury occurring in the course of that journey would not be covered.

Another situation is where there is an injury occurring in the course of a journey between what might be called two working points. That is, where the worker terminates productive activity at one point and then has to travel to commence productive activity at another point. If that occurs in the course of a working day, then the travel is one of the requirements of the job. It is one of the functions that the worker has to perform as part of the employment whether or not the worker is paid for it. Where the worker terminates productive activity at one point and is required to commence productive activity at another point, travel between those points is part of the employment and is in the course of employment as long as the worker is travelling reasonably directly and is not making major deviations for personal reasons.

A different situation arises when the job function requires the worker, after first reporting to the employer's premises or assembly area, to travel to a work location. Clearly, the worker's travel from home to the employer's premises or assembly area would be considered commuting and, as such, would not warrant compensation coverage. The worker's travel from the employer's premises or assembly area to the point where he or she will begin work is normally covered as being in the course of employment. This situation is distinct from that of union members who go from a hiring hall to different work locations and, perhaps, to different employers each day. (See #18.22, third paragraph, "Stevedores".)

A further situation arises when the job function requires the worker to report at what might be called irregular starting points. That is, different starting points on different days or different months and terminating employment at different termination points. This could apply, for example, to bus drivers. In cases where such a driver must first report to the depot to receive an assignment, travel from home to the depot would not be covered under compensation. The question as to whether the driver's travel from the depot to the point where the run will begin should be covered as being in the course of employment is distinct from that of union members who go from a hiring hall to different work locations and, perhaps, to different employers each day. There is only one employer in this case and the worker is sent from the employer's premises. In such a situation, once the worker has been dispatched from the depot to journey to the point where the run will begin, as long as the worker is proceeding toward that place with reasonable expedition and without substantial deviation, the worker

should be considered to be travelling in the course of employment and hence covered for compensation regardless of whether public or private transportation is used. The question has also been raised as to whether the driver would be covered for compensation in travelling from the finishing point to the depot at the finish of a shift. Where a driver has completed work and is returning to the depot and is travelling reasonably directly and does not make any major deviations for personal reasons, the driver would be considered in the course of employment until such time as the depot is reached.

Where a worker has a regular or usual place of employment and is assigned temporarily to work at a place other than the regular place of employment, the worker is covered for compensation while travelling to and from that temporary place, and this is so whether the worker goes there from the regular place of employment or goes there directly from home. The same rule applies, for example, to a delivery person who goes direct from home to make deliveries.

### *#18.33 Deviations From Route*

Where an employee is instructed by the employer to perform some activity related to work while on the way to or from the normal place of work, this does not necessarily provide coverage for the whole journey. Generally speaking, it will only provide coverage to the extent that the employee has, because of these instructions, to do something which would not normally be done while travelling to or from work or go somewhere where the employee would not normally go. This is particularly so when the instructions only require a minor diversion from what is essentially a normal journey to work.

In one case, an employee was asked to stop on his way to work and have snow tires put on his employer's car that he was driving. His claim was denied because he was injured close to his home and at the beginning of a normal journey to his office. He still had a fair distance to travel before he would divert from this route to work to carry out his employer's instructions. The place where the snow tires were to be fitted was close to his office and the fact that he had to go there did not appear to have significantly affected the initial part of his journey. Though road conditions were bad and thus provided some risk, this risk was one that he would, in any event, have to meet in travelling to work. He had to leave earlier to enable him to carry out his employer's instructions, but this reduced rather than increased the risks of the journey.

Where a worker is covered while travelling to a place of work, that worker must proceed with reasonable expedition and without substantial deviation from the most convenient route. Otherwise the worker may be regarded as no longer in the course of employment.

## #18.40 Travelling Employees

Employees whose job involves travelling on a particular occasion or generally are covered while travelling. Where they do not travel to their employer's premises before beginning the travelling required by their work, they are covered from the moment they leave their residence. However, they will not be covered if they first travel to their employer's premises even though their vehicle has been provided by their employer and/or they need that vehicle to do the travelling required by their work.

### #18.41 *Personal Activities During Business Trips*

The basic principle followed by the Board is set out in Larson's *Workmen's Compensation Law* as follows:

"Employees whose work entails travel away from the employer's premises are held . . . to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown." (5)

This principle covers the activities of travelling, eating in restaurants, and staying in hotels overnight where these are required by a person's employment.

What is meant by the reference to a "distinct departure on a personal errand"? It clearly does not simply refer to such everyday activities as eating, sleeping or washing which, in the case of most non-travelling employees would be regarded as personal activities outside the scope of the employment when performed outside normal work hours. Such activities will normally be regarded as within the scope of the employment of an employee who is required to travel. On the other hand, if, for example, a person on a business trip attends a theatre or spends the evening in a public house, these would probably not be regarded as activities in the course of employment.

The test to be applied is set out in #21.00.

Normal activities such as eating, sleeping and washing can be regarded as personal activities which are incidental to the stay in the hotel required as a result of the employment. Where a worker goes out for a purely social evening, the worker may be staying in a hotel as a result of employment, but this employment feature of the situation may be clearly outweighed by the personal nature of the social activity.

In a Board decision, the deceased worker was an independent truck operator. Having delivered his loads earlier in the day, he went to a hotel for a social evening, drinking beer with friends from 7:00 p.m. until approximately 1:00 a.m.

At that time, he left the hotel. While driving the truck from there to the place where he usually parked it for the night, he was unfortunately killed. If the deceased had simply stopped for a short refreshment break after completing his deliveries and before returning home with his truck, the Board might well have concluded that he was still in the course of employment. But here the deceased had long since finished his employment functions of the day. The social evening was not a brief and incidental diversion. This was not a small feature of private life featuring in a sequence of employment activity. Rather, this was a case where an incident of the employment (i.e. the truck) featured incidentally in the social activity and private life of the deceased. The death was, therefore, not one arising out of and in the course of employment.

An injury may arise in the course of an employment activity but will not be compensable unless it also arises out of the employment. In the case of a worker who has to stay in a hotel on a business trip, this means that the injury must be caused by some hazard of the environment into which the worker has been put by the employment. In particular, this includes hazards of the hotel premises itself. Thus, for example, an injury will be compensable if it arises from the collapse of all or part of the hotel building or the burning down of that building. Another example would be where a claimant is required to stay in a hotel as part of the employment. Although engaged in a personal activity; leaving the bathroom, at the time of the injury, it is regarded as merely incidental to the requirement that the claimant stay overnight in the hotel. The injury resulted from tripping over a sill, a fairly obvious hazard of the hotel premises. The injury, therefore, is considered to have arisen both in the course of and out of the claimant's employment. It follows that injuries resulting from some hazard introduced to the premises by the claimant for personal benefit will not be considered to have arisen out of the employment.

In another decision, a sales supervisor sustained a back injury while lifting a spare tire into the trunk of his car on Saturday, while preparing for a business trip to commence on Monday. If the claimant had been lifting display materials into the trunk of his car or had been involved in cleanup or repairs in which he would not normally have been involved, then there may be little doubt that an injury received under such circumstances would be compensable. The claimant's evidence at the board of review hearing, however, indicated that employees were responsible for all maintenance on their cars. The question then is whether the standard of upkeep was any more than that which a person would normally do. In this case, it appears that the repairs effected and the subsequent cleanup were normal duties carried out by car owners. There is little on the facts to suggest that these actions were connected with the employment relationship as opposed to being undertaken in the claimant's capacity as a car owner. The claim was therefore disallowed.

### *#18.42 Trips Having Business and Non-Business Purpose*

Whatever other requirements there may be for accepting a claim for an injury occurring on a trip made for business and non-business purposes, one essential is that the injury occur at a time when the claimant is or is substantially on the route which leads to the place where the business purpose is to be carried out. No compensation is payable where the injury occurs while the claimant is making a significant deviation from that route for non-business purposes.

### **#19.00 USE OF FACILITIES PROVIDED BY THE EMPLOYER**

Where a worker is injured in the course of using some facility supplied or provision made by the employer, the use of such facility or provision may be part of the employment relationship; and injuries resulting therefrom may be injuries arising out of and in the course of employment.

This rule is considered in relation to the situations set out below.

#### **#19.10 Bunkhouses**

The use of residential premises by a worker is considered as part of the employment where the worker is required to use those premises by the employer, where there is no reasonable alternative accommodation, or their use is encouraged or contemplated by the employer. However, where an employer is simply providing accommodation for the employer's workers as an additional service, and the availability of suitable alternative accommodation gives the worker a reasonable choice between that provided by the employer and that provided by others, the worker's use of the employer's accommodation is not within the scope of the employment.

Where a camp is isolated or for other reasons the worker has no reasonable choice about staying in accommodation provided by the employer, injuries resulting from the use of facilities provided by the employer on the camp site will normally be held to have arisen out of and in the course of the employment. This applies not only to residential but to recreational facilities. This principle is illustrated by the facts of a Board decision where a claim was allowed from a man working for a mining company in a remote area of British Columbia and living in a bunkhouse provided by the company at a townsite approximately half a mile from the mine. Some time after the end of his shift the claimant was going for a recreational walk, and was injured in a fall while descending the steps of the bunkhouse.

On the other hand, another claim where the claimant was injured when he slipped on the ice while leaving his apartment in the town of Kitsault was denied. The townsite was owned and created by a mining company to accommodate its

employees, but a little less than half the population were employees. The town provided a variety of residential, social and recreational facilities. The apartment in question was owned by the company and rented to the claimant at a rent slightly below market value. It was argued that the whole townsite was one large bunkhouse, but this was rejected. While the town was remote, this was not in itself sufficient. The rules extending coverage to bunkhouses did not apply to the situation where a company initiated and owned operation had evolved into a self-contained, viable community differing in its social structure from a normal town or village only by virtue of the fact that the principle employer is the sole property owner. There was no isolation from a normal personal and social life suffered by workers living in the town.

In another decision, the worker resided in a bunkhouse on a camp complex of his employer located close to Kelsey Bay. There were recreational facilities and living accommodation available to the worker in Kelsey Bay and most of his fellow workers took advantage of them. The claimant was injured when he fell down the steps of a building on his employer's camp complex which was being used for holding a film show. The claim was denied and distinguished from the first example on the basis of the remoteness of the work site in that decision.

Even where the bunkhouse is not isolated and there is other available accommodation, there may be coverage where the bunkhouse accommodation is provided free of charge and the worker would have to pay for other accommodation. In practice, most persons would stay in the bunkhouse in such a situation and only those who had existing homes nearby would likely exercise the option to live elsewhere. The freedom of choice would be more theoretical than real and this may be a factor which indicates that coverage should extend to residing in the bunkhouse. On the other hand, while in the case of an isolated camp, coverage may extend to injuries arising from both residential and recreational facilities, the same will not necessarily be the case when the bunkhouse is located close to the town and alternative facilities. Economic factors may make a worker's freedom to choose the worker's own residence largely theoretical, but this does not extend to the choice of recreation. In the Kelsey Bay case described above, the claim was for an injury occurring in the course of a recreational activity.

An injury occurring on the premises of the employer will not be compensable if it results from the introduction to the premises of a hazard by the worker, for example, where the worker accidentally shoots himself or herself with the worker's own shotgun. (6)

## **#19.20 Parking Lots**

For the purpose of determining whether an injury occurring in a parking lot is compensable, the Board looks at five basic questions.

First, was the lot provided by the employer for the worker? The unauthorized use of a parking space by a worker would normally exclude the acceptance of a claim on the basis that the injury was not work related. There will, however, be exceptions where the employer, while not authorizing the parking, has condoned the practice by default in failing to take action to prohibit the practice.

Second, was the lot controlled by the employer? (The fact that a lot is owned or leased by an employer does not, in itself, automatically imply that it is controlled by the employer.) Claims are received for injuries occurring in parking lots not owned by the employer, but as a result of some arrangement, the worker is permitted to park there. If the lot is controlled by the employer, a claim may be acceptable. In claims involving shopping centre or shopping mall parking lots which are designed primarily for customer use and not controlled by the individual employer of a claimant, an injury occurring on such premises would not normally be considered as acceptable.

Third, was the injury caused by a hazard of the premises? This is intended to limit acceptance to only those injuries which have a connotation of "employment relationship". For example, a slip on a pool of oil or a trip over an obstruction would qualify. On the other hand, claimants who nip their fingers in their own car doors would not have their claims accepted. (7) There will also be claims which are not a direct result of the premises which may qualify, such as a pedestrian struck by a fellow employee's car. The term "hazard of the premises" is not an absolute requirement for compensation coverage. Rather it illustrates the distinction between injuries resulting from personal causes and those resulting from the employment. In effect, the type of injury that would qualify for acceptance if it occurred on a factory floor would also qualify for acceptance if it occurred in a parking lot.

Fourth, was the parking lot contiguous to the place of employment? The word "contiguous" is defined as meaning both adjacent to and attached to. While desirable, it should not be deemed a mandatory prerequisite for acceptance. Non-contiguous lots, particularly those under the direction, supervision or control of an employer do qualify although coverage does not normally extend to workers while they are making their way to them across and along public thoroughfares.

Finally, did the injury occur proximal to the start or stop of the shift? If there is a significant time gap between the time of an accident and the start or stop of the shift, the matter is investigated to determine whether there is an employment relationship.

## **#19.30 Lunchrooms**

Claims for injuries occurring in lunchrooms are acceptable if the lunchroom is provided by the employer. Again coverage is limited to reasonable use of the premises and would not extend to injuries sustained through eating food, unless this had been provided by the employer, and the employees had been specifically required to eat food provided by the employer, or it was provided as part of the worker remuneration.

People who have to travel in the course of their employment are covered during normal meal breaks. But a non-travelling employee who chooses to have a coffee break in a coffee shop across the street from the employment, rather than use the company facilities, would not be covered. (8)

### *#19.31 Injury Results from Claimant's Personal Property*

An injury which arises in the course of the employment will not be compensable if it arises out of exposure to a hazard or risk which is not related to the worker's employment. If a worker is injured through exposure to a hazard which the worker, as a personal matter, introduced into the workplace, that injury is not considered to have arisen out of the worker's employment. This principle was applied in a Board decision where the claimant fell backwards off a bench on which he was sitting eating his lunch. As a result of the fall, a paring knife which he had brought from home for the purpose of eating his lunch, stuck into his thigh. The claim was denied because the claimant had introduced an exceptional hazard onto the premises of the employer for his own personal use. The injury suffered would have been very minor or non-existent if the paring knife brought to work by the claimant had not been lying on his lap at the time of the injury.

It is not essential that the personal property that causes the injury be intrinsically hazardous. It is sufficient that it causes the injury in the particular case. In general, injuries are not compensable where they result entirely from personal property brought onto the employer's premises by claimants for their own purposes and have no connection with their employment.

## **#19.40 Medical Facilities**

The provision of medical or first aid facilities by an employer may be a factor indicating that an injury resulting from their use arose out of and in the course of employment.

### #19.41 *Adverse Reactions to Inoculations or Injections*

The following principles apply in claims arising from an adverse reaction to injections or inoculations:

1. Where the injection or inoculation is received voluntarily by the worker, either as part of a broad program put on by the employer or in any other circumstances, a claim should not be accepted.
2. Where the inoculation or injection is required, either as a condition of employment or as a condition of continued employment (such as where the claimant has suffered an injury or contracted a disease outside the work environment, but the employer insists on precautionary measures being taken before the worker returns to employment), the claim should be allowed.
3. Although each claim has to be decided on its merits, generally a subjective test should be applied to determine whether or not the worker was “compelled” to take the treatment. For example, in one claim submitted for consideration, the following factors were taken into account:
  - (a) the employer had established a program whereby tetanus shots were given when metal cuts occurred;
  - (b) although the first shot was with consent, the notice for the booster shot left the impression that it was required. In other words, no choice was specifically given. The worker was merely advised he was to attend at a specific time and place to receive the shot;
  - (c) since no worker had ever refused a booster shot, there was further group or peer pressure and it was unlikely that a worker would feel free to refuse;
  - (d) that unlikeliness was increased by the claimant’s language difficulties.

In general then, if the evidence is clear that the claimant was personally convinced that it was necessary to take the shot in spite of objective evidence from the employer that the process was not compulsory, the claim should be accepted.

## **#20.00 EXTRA-EMPLOYMENT ACTIVITIES**

Generally speaking, activities which people undertake outside of their employment are for their own benefit and injuries occurring in the course of them are not compensable. There are, however, some activities which because of their relevance to the claimant's employment may be accepted as being part of that employment.

### **#20.10 Participation in Competitions**

Subject to the general rules relating to compensation coverage, an injury sustained by a worker while participating in a first aid competition, mine rescue competition, or fire-fighting competition, or while travelling to or from such an event, will be considered one arising out of and in the course of employment if the following conditions are satisfied.

1. The type of skill or knowledge that the competition is designed to test or promote must be a type of skill or knowledge of service to the worker in her or his employment. For example, if it is a first aid competition, the worker must be one who functions as a first aid attendant in her or his employment, or be a trainee for such a function. It is not necessary, however, that the worker should function in this 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.
2. The worker must be a participant in the event, not merely a spectator. The worker will be considered a participant if either:
  - (a) the worker is a participating or reserve member of a competing team, or;
  - (b) the worker is a coach or trainer, or;
  - (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 first aid, mine rescue, or fire-fighting similar to those of the competitors, or is training for such responsibilities, and is attending to improve her or his skill or knowledge relating to those responsibilities.
3. The participation of the worker in the event must be sponsored or requested in some way by his or her employer. If the employer has not specifically requested the worker to attend, a request may be implied from the circumstances. For example, a request for the worker to attend may be implied if:

- (a) the worker is paid for the whole or any part of the period of her or his participation, or;
- (b) the worker is paid for the whole or any part of the time spent in training for the event, or;
- (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 her or his training for the event.

## **#20.20 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 *Workers Compensation Act*. There are, however, exceptional cases when such activities may be covered. The obvious one is where the main job for which a worker is hired is to organize and participate in recreational activities, for instance, a physical education teacher in a school. 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.

It is not possible to define exclusively what these circumstances are. The following factors are, however, considered:

### 1. Activities Part of Job

Were the activities part of the job? A physical education teacher involved in team sports with the pupils would normally be covered whereas participation in a sport with fellow-teachers, particularly outside of working hours, would not likely warrant coverage. A ski instructor enjoying personal skiing activities or, of his or her own volition, takes part in a ski race or competition would not be covered. If, however, the competition or race involved the instructor's pupils and was deemed part of the teaching activities, then coverage would likely apply.

### 2. Nature of Direction

Was participation directed, requested or voluntary?

(a) Directed

Was the worker instructed or otherwise directed by the employer to carry out the exercise activity or to participate in the sports activity? The more positive the form of direction, the more likely it is that coverage will apply. Adjudicators, however, have to measure whether or not what may have been termed a direction was in reality no more than a request.

(b) Requested

Did the employer request, suggest, or simply sanction participation? In such situations this is less likely to favour coverage, though the overall adjudication will still depend upon the combined relevancy of other related factors.

(c) Voluntary

Was participation purely voluntary on the part of the worker? Where this is the case, it is generally not sufficient to extend coverage to the worker's activities. This applies equally to recreation, exercise or sports activities.

3. During Working Hours

Did the recreational, exercise or sports activity occur during normal working hours? Where this is the case, it usually favours coverage, but does not necessarily guarantee it.

4. Outside Working Hours

(a) Recreational or Exercise Activities

In the case of recreational or exercise activities, coverage outside of working hours is not extended. This limitation applies to paid lunch breaks even if the worker could be considered on call at that time. As a limitation, it also involves situations where, in keeping with the physical fitness demands of a job, the employer requires the performance of exercise activities at home. An employer cannot extend the coverage of the Act by simply labelling an off-duty exercise requirement as mandatory.

(b) Sports Activities

Sports activities outside of normal working hours are similarly not covered. The Board has, in the past, developed exceptions in the case of claims involving police officers. Where appropriate, these can be applied to other like situations. The guidelines are:

- (i) The employer has directed participation in the activity.
- (ii) The sports activity involved the public, or a section of the public with which the worker deals, and was clearly designed to foster good community relations.
- (iii) Full salary or wages was paid while participating.
- (iv) If a team sport, the team was financially supported by the employer.
- (v) The team was composed entirely of fellow employees.
- (vi) There was no involvement with a commercial team or recreational league.

5. Paid Salary

Was the worker paid full salary while participating in the activity? The payment of salary favours coverage, but is not an absolute guarantee. If full salary is not being paid, coverage is unlikely, or at least questionable, depending upon other related circumstances.

6. Activity Supervised

Was the activity supervised by a representative of the employer having supervisory authority? This strongly favours coverage. The fact that the activity was not supervised does not favour coverage. In situations involving recreational or exercise activities off the employer's premises, coverage does not apply if it is not supervised.

7. Fitness a Job Requirement

Was physical fitness a requirement of the job? While this is always evaluated in conjunction with other factors, if it applies, it is a favourable factor toward extending coverage. The requirement for physical fitness in a job does not, however, in itself guarantee coverage for such activities. A distinction must be drawn between things a worker must do to become and continue to be qualified to perform a particular job, and the things a worker must do as part of the job. Generally speaking, only the latter activities are covered. In the

case of recreational or exercise activities, if physical fitness is not a job requirement, then coverage is not extended. 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 *Workers Compensation Act* for that reason alone would obviously be to expand its horizons far beyond what the Legislature intended.

#### 8. Public Relations

In the case of organized or team sports activities, was there an intention to foster good relations with the public, or a section of the public with which the worker deals? If this applies, then depending on other related factors, coverage may be extended. If this public relations factor is not applicable, coverage is unlikely to be extended. Coverage will never be extended if the sports activity involves a contest with a commercial team or recreational league.

#### 9. On Employer's Premises

Did the activity take place on the employer's premises? This is a positive factor favouring coverage but it must be evaluated in conjunction with other relevant factors. If the activity took place off the employer's premises, and was a sports activity, the guidelines listed previously in the items dealing with working hours apply. Recreational or exercise activities occurring off the employer's premises are only covered where:

- (a) The employer funds or subsidizes the activities.
- (b) The funding or subsidization was in the form of fees paid to a commercial exercise facility such as a gymnasium or health and exercise spa.
- (c) The activities were part of a formal exercise or training program instituted by the employer.
- (d) The actual activity was directly supervised by a representative of the employer having supervisory authority.
- (e) The activity occurred during normal shift hours for which salary was being paid. (This includes paid lunch breaks.)
- (f) The activity was required, encouraged or at least sanctioned by the employer.

- (g) The nature of the job function is such that a high level of physical fitness is desirable.

### **#20.30 Educational or Training Courses**

A distinction must be drawn between things workers must do to become and continue to be qualified to perform a particular job and the things they must do as part of the job. Generally speaking, only the latter activities are covered. A person may, for example, need to spend some time in an educational or training institute to obtain or maintain the qualifications necessary for a particular job, but that person is not normally covered while attending that institution.

Compensation coverage does not extend to injuries occurring in the course of first aid courses being taken off the employer's premises and outside work hours. This is so, even though the worker receives additional pay for a first aid ticket and is reimbursed the course fees by the employer.

Injuries in the course of training programs undertaken under the auspices of the Board following a compensable injury are dealt with in #88.54.

### **#20.40 Provision of Clothing and Equipment Required for Job**

The fact that a worker is required to provide tools for the job does not mean that carrying the tools to work or away from work becomes part of the employment. A worker may have to satisfy many prerequisites before obtaining a job, for example, education, experience, physical condition, clothing, equipment, or travelling to the work site. After the completion of a job, a worker may have to carry out various activities of a consequential nature, for example, cleaning clothes, removing equipment or travelling from the work site. None of these activities are normally covered as part of a worker's employment under the *Workers Compensation Act*. Nor does the mere fact that the employer pays certain expenses associated with these activities result in coverage.

In one case, a claimant was injured while lifting his tools from out of his car at the end of his journey from work. He had received travel time and expenses for that journey. The claim was denied. The fact that the claimant was covered while travelling because of the receipt of travel time and expenses did not mean that he was also covered while removing tools at the end of the journey. The wages were paid for travelling, not for carrying tools. Coverage on the basis of the travelling allowance ended when he parked the car outside his home.

Changing clothes prior to starting or after finishing work is not normally part of the employment, whether it takes place at home, on the employer's premises or elsewhere.

#### **#20.41 *Injuries Resulting from Workers Clothing or Footwear***

Injuries resulting from the wearing of clothing or footwear are adjudicated according to the following principles:

1. The clothing in question must be necessary for the job.
2. As in all other cases, the injury must arise out of and in the course of employment. Therefore, if there is nothing in the employment activity which would reasonably cause an injury and that injury can be seen to be directly related to the ill-fitting nature of the clothes, the claim should be disallowed. However, even though the clothing may be ill-fitting, if the job involves certain activity which might in the ordinary course of events and with proper clothing cause the injury, the claim should be allowed.
3. Who purchased the clothing or item in question is irrelevant.

#### **#20.50 *Fund Raising, Charitable or Other Similar Activities***

Situations occasionally arise when a person is injured while participating in fund raising, charitable or other similar activities; for example, a charity collection activity off the employer's premises, either during or outside of working hours. Other examples could involve school teachers participating in a bake sale, a car wash, a walkathon, etc. with a view to raising funds for field trips, or other similar peripheral activities not covered by direct school funding.

Two of the statutory tests set in Section 5(1) of the *Workers Compensation Act* for the adjudication of personal injury claims are the requirements that the injury be arising out of, and in the course of, the employment. Much has been written about these two tests, part of which is that the interpretation of the word "employment" should not be restricted to actual productive activity. The nature of any non-productive activity, however, has to be evaluated in order to determine whether it meets, or extends beyond, the legislative intent of these two tests. The guidelines listed in #14.00 are, while not exhaustive, useful in making such determinations. Fund raising, charitable or other similar activities do not meet the requirements of these two statutory tests. To extend the interpretation of the Act to include such activities would be to expand the horizons of the Act beyond what the Legislature intended.

Claims received for injuries occurring in the course of fund raising, charitable or similar activities will not, therefore, be deemed acceptable. This, however, 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.

## **#21.00 PERSONAL ACTS**

There is a dilemma that is always inherent in workers' compensation. The difficulty, of course, is that the activities of workers are not neatly divisible into two clear categories, their employment functions and their personal lives. There is a broad area of intersection and overlap between work and personal affairs, and somewhere in that broad area the perimeter of workers' compensation must be mapped. An incidental intrusion of personal activity into the process of work will not require a claim, otherwise valid, to be denied. For example, it has long been accepted that compensation is not limited to injuries occurring in course of production. Where persons are injured while at work in the broader sense of that term, claims will not be denied on the ground that at the precise moment of injury they were blowing their noses, using the toilets or having their coffee break. Similarly it has long been accepted that when a truck driver stops for a meal in the course of a long journey and is injured while crossing the road the driver is just as much entitled to compensation as a factory worker injured on the way to the works canteen. Conversely, the intrusion of some aspect of work into the personal life of an employee at the moment an injury is suffered will not entitle the employee to compensation. For example, if someone slips in the living room at home and is injured, that person is not entitled to compensation simply on the ground that at the crucial moment the person was reading a book related to work. In the marginal cases, it is impossible to do better than weigh the employment features of the situation in balance with the personal features and reach a conclusion (which can never be devoid of intuitive judgment) about which should be treated as predominant.

Where the common practice of an employer or an industry permits some latitude to employees to attend to matters of personal comfort or convenience in the course of employment, compensation for injuries occurring at those moments is not denied simply on the ground that the employee is not at the crucial moment in the course of production. This is within the scope of the established doctrine relating to acts which, though not in themselves productive, are nevertheless a normal incident of employment.

### **#21.10 Lunch, Coffee and Other Breaks**

A worker is considered to be acting in the course of employment not only when doing the work the worker is employed to do but also while engaged in other

incidental activities. For example, a worker does not cease to be in the course of employment while having a lunch or coffee break on the employer's premises, while going to the toilet, having a smoke or other such activities. Therefore, if while engaged in such activities the worker is injured by virtue of some aspect of the work environment, a claim will be accepted. On the other hand, not all injuries occurring while engaged in such activities will be compensable. The injury must "arise out of" the employment as well as "in the course of" it. Thus, for example, if a worker has a heart attack while having a smoke during working hours a claim will likely be denied. This is because the heart attack probably arose from natural causes and was not caused by any aspect of the employment rather than because, in having a smoke, the worker was no longer in the course of employment.

In one case the claimant, during a paid coffee break, went out from her place of work to her employer's parking lot with the intention of moving her car closer to the mill entrance. However, before she could do this, she trapped her finger in the car door while shutting it. The purpose of moving the car was to allow her to leave work more quickly and easily at the end of the day. She did not cease to be in the course of her employment when she walked out to the parking lot. It was not unreasonable for her to go out to her car during her coffee break. The evidence established that there was a common practice for employees to do this which was acquiesced in by the employer. If, for example, she had tripped over a pot hole in the lot, any resulting injury would have been compensable. It would have arisen out of the employment, as well as in the course of the employment, as it was caused by a hazard of the employer's premises. It was considered that, in trapping her finger in her car door, she had not suffered an injury which arose out of her employment. The car was her personal property which she had brought onto the employer's premises for her own convenience. It was a hazard arising from the use of this property which caused her injury.

This case should be contrasted with another claim where the claimant during a break in production, ran out to his car in the parking lot to get a package of cigarettes and twisted his ankle. His claim was denied. A person is considered to be in the course of his employment while entering and leaving his employer's premises at the start and end of his shift and at other recognized coffee or lunch breaks. This may also extend to other times when a worker has to leave his employer's premises for good reason, for example, in emergencies. However, not all trips to and from the worker's place of work can be treated in this way. There will be trips for personal reasons unrelated to the work and which cannot be said to be simply incidental to that work. There is no coverage in such cases. The trip made in this case was of that kind.

It was considered that more was involved here than such activities as blowing a nose, smoking a cigarette, or going to the toilet, which would normally be accepted as incidental to the employment. The rationale for accepting such

activities is that they benefit the employer by making his employees comfortable while they are working and, therefore, in the long run, more efficient. It can, of course, be argued that the claimant's going to get his cigarettes benefited his employer by putting him in a position where he would be able to smoke and make himself comfortable. However, it seemed that this doctrine should be limited to the specific activities which make the worker more comfortable and not to other secondary activities which put him in the position of doing these activities.

## **#21.20 Vacations**

Generally speaking a person who works during a vacation from normal employment is acting in a personal capacity and unless personal optional protection has been purchased from the Board, or the claimant is working in another employment covered by the Act, there will be no coverage for workers' compensation purposes. In some few cases, there may be evidence showing that, although the employee is on vacation, the employee is in fact working for the usual employer. However, this cannot be simply assumed because the employee is doing work of a type normally done and for someone who is also a customer of the employer.

In a Board decision, the claimant repaired a recreational vehicle which was owned by him and a partner and such repairs took place while the claimant was on holidays. The claimant and his partner, operating under the firm name of "X", also leased the vehicle to the general public on occasion, and had a contractual arrangement for maintenance of, and repairs to, the vehicle with "Y", a firm of which the claimant and his wife were principals. The claimant contended that the repairs were performed in his business and not his personal capacity, but the claim was denied. Apart from the claimant's own testimony, there were no objective facts to indicate that he was acting in the course of his employment at the time of injury. The mere fact that the claimant was the principal of "Y" and that "Y" subsequently submitted an invoice for the work to "X" was insufficient.

## **#21.30 Payment of Wages or Salary**

Where a worker is injured in the course of receiving the consideration for the employment, the acceptance of such consideration is part of the employment relationship, and injuries resulting therefrom are injuries arising out of and in the course of employment.

This clearly covers a worker injured while drawing wages in cash at the pay office of an industrial plant. However, it may also apply where an employee is paid by cheque and is injured in the course of converting that cheque into a usable form, either by cashing it or by depositing it in the employee's own bank

account. If the cashing or depositing of the cheque occurs in circumstances which, in some other respect, have a significant employment connection, compensation will normally be paid.

In a Board decision, a truck driver was driving his employer's truck back to the yard at the end of his shift when he decided to call in at the bank on his way and cash his pay cheque. While crossing the road to return to his truck after cashing the cheque the claimant was hit by a passing vehicle. It was decided that in so far as the claimant may have undertaken a diversion to attend to a matter of personal concern, this was so trivial compared with the continuing employment features of the situation that it would be wrong to treat the personal aspect as controlling.

### **#21.40 Acts for Personal Benefit of Principals of Business**

In the case of independent operators with personal optional protection and active principals of small companies, it is necessary to distinguish between the activities of the claimant carried on in furtherance of the business for which he or she or the company is covered by the Act and independent, personal or business activities which are not so covered. Only injuries occurring while pursuing the former type of activity are covered by the Act. For example, in one claim, the principal of a small plumbing and heating company was injured while fogging mosquitoes on property belonging to himself and to other members of a property owners association. Although the claimant's company supplied the materials used, there was no evidence that the fogging was done as part of the business of that company. Rather, the evidence indicated that it was an independent personal enterprise carried on by the claimant on behalf of himself and the association. The facts of the case set out in #21.20 also illustrate the same principle.

On the other hand, in another Board decision, the claimant was employed by an auto body shop, a limited company of which Mr. "X" was President and part owner. After making a delivery to a customer with Mr. "X", the claimant was requested to assist Mr. "X" to pick up a bed and deliver it to his mother. The claimant injured his back while moving the bed. This took place within normal working hours. The claim was disallowed by the Adjudicator because moving the bed was not related to the employer's business as a body shop owner. This argument had merit vis-a-vis the fact that the claimant's legal employer was a limited company. However, the board of review felt that for practical purposes Mr. "X" was the employer. Moving the bed was for the benefit of Mr. "X", and at the same time Mr. "X" asked the claimant to assist him in moving the bed, he was being paid by him and was acting under his directions.

## **#22.00 COMPENSABLE CONSEQUENCES OF WORK INJURIES**

Once it is established that an injury arose out of and in the course of employment, the question arises as to what consequences of that injury are compensable. The minimum requirement before one event can be considered as the consequence of another is that it would not have happened but for the other.

Not all consequences of work injuries are compensable. A claim will not be reopened merely because a later injury would not have occurred but for the original injury. Looking at the matter broadly and from a “common sense” point of view, it should be considered whether the work injury was a significant cause of the later injury. If the work injury was a significant cause of the further injury, then the further injury is sufficiently connected to the work injury so that it forms an inseparable part of the work injury. The further injury is therefore considered to arise out of and in the course of employment and is compensable.

**EFFECTIVE DATE:** February 1, 2004

**APPLICATION:** All decisions, including appellate decisions, made on or after February 1, 2004 regardless of the date of the original work injury or the further injury.

### **#22.10 Further Injury or Increased Disablement Resulting from Treatment**

Where a further injury or increased disablement arises as a direct consequence of treatment for a compensable injury, it is sufficiently connected to the original work injury as to form part of that injury. The further injury is therefore considered to arise out of and in the course of employment and is compensable.

Where a worker is undergoing treatment for a compensable injury, the place of treatment is analogous to a place of employment. A further injury arising out of the place of treatment is compensable provided it is consistent with the worker being at the place of treatment for the purpose of treatment and does not result from activities of a personal nature. The further injury in these cases is compensable because it is sufficiently connected to the original work injury so that it forms part of that injury and is therefore considered to arise out of and in the course of employment. For example, if a worker is undergoing treatment at a hospital for a compensable injury and sustains a further injury by stumbling down the stairs in the hospital while en route to a treatment appointment, the further injury is also compensable.

**EFFECTIVE DATE:** February 1, 2004

**APPLICATION:** All decisions, including appellate decisions, made on or after February 1, 2004 regardless of the date of the original work injury or the further injury.

## *#22.11 Disablement Caused by Unauthorized Surgery*

Compensation is not limited to the direct consequences of work accidents. Ordinarily, when a worker undertakes surgery for a work injury, the consequences of the surgery are considered to be sufficiently connected to the original work injury as to form part of that injury. Any disablement resulting from the surgery is treated as compensable on the basis that it arose out of and in the course of employment.

An exception could be made if a worker recklessly undertook surgery, knowing that it was likely to do more harm than good. In that case, a worker might be viewed as having introduced a new cause of disablement so that the further injury is not sufficiently connected to the original work injury so as to form part of that injury. There may be other grounds for making an exception. However, the connection between the original work injury and the further injury is not severed simply because the surgery was not authorized by the Board.

Virtually all patients place complete faith in their physicians and, if a physician merely suggests the remote possibility of improvement in a patient's condition through surgery, it cannot be said to be "clearly unreasonable" for the patient to go along with that suggestion. It is irrelevant whether unauthorized surgery was successful or unsuccessful, whether or not the worker and/or the physician knew the Board was not prepared to authorize the surgery, nor that the surgery was purely exploratory in nature.

The only situation where it is foreseeable that the Board could reasonably refuse payment of benefits for unauthorized surgery is where a worker, in desperation and against the advice of every other physician consulted, deliberately seeks out surgery. In such a situation, the connection between the original work injury and the further injury is considered to be severed. However, unless the worker can be shown to have acted foolishly, the worker should not be deprived of compensation because there happens to be a persuasive surgeon involved who has convinced the worker that, on balance, surgery is the best course of action.(9)

The above rules only apply where the surgery resulted from the injury. The Board accepts no responsibility for the cost of surgery or any resulting disability where the surgery was not a consequence of the injury.

**EFFECTIVE DATE:** February 1, 2004

**APPLICATION:** All decisions, including appellate decisions, made on or after February 1, 2004 regardless of the date of the original work injury or the further injury.

### *#22.12 Acceleration of Treatment*

The Board accepts responsibility for all the consequences of treatment where the need for it was accelerated by the injury, even where it would likely have been required at some point in the future in any event. The only exception is where the injury is superimposed on an already existing disability so that Proportionate Entitlement applies. (10)

### *#22.13 Activities at Home*

While the Board does pay compensation for injuries arising out of and in the course of medical treatment for a work injury, this does not extend to ordinary exercises performed at home long after the worker has recovered, or the condition has stabilized and the worker is in receipt of a permanent disability pension. Such exercises are usually for the purpose of preventing further problems rather than for treating an existing condition. Compensation is not payable in respect of preventive measures.

### *#22.14 Treatment Unrelated to Injury*

Where a worker has to undergo surgery, tests, or other treatment for a non-compensable condition or a non-compensable injury occurs prior to the worker's complete recovery from a compensable injury, and there is for that reason, a delay in recovery or an aggravation of the condition, there are two possible methods for the Claims Adjudicator to deal with the situation. The Adjudicator may, on the one hand, continue to pay wage-loss benefits after the occurrence of the non-compensable injury or treatment for a period which the Adjudicator estimates the worker would have taken to fully recover from the compensable injury if the non-compensable injury or treatment had not occurred. Alternatively, the Adjudicator might immediately terminate benefits on the occurrence of the non-compensable injury or treatment and recommence them when the worker's recovery is at the same stage as it was immediately before its occurrence. Either of these methods may be an appropriate way of dealing with the circumstances of a particular claim. However, in no situation could there be justification for applying both methods to the same claim at the same time, since this would, in effect, result in a double payment to the worker.

The above rule applies though the treatment is carried out at the same time as the treatment for the compensable condition and might not have been carried out at the time if the claimant had not then sought treatment for the compensable condition.

If a compensable injury delays a worker's recovery from subsequent non-compensable surgery, wage-loss compensation may be paid for the period of the delay.

### *#22.15 Travelling To and From Treatment*

The test for determining whether a further injury is compensable is whether the work injury was a significant cause of the further injury. Where this test is met, there is a sufficient connection between the work injury and the further injury to consider the further injury a part of the work injury. In considering whether this test has been met, the place of treatment is analogous to a place of employment.

Travel to the place of treatment is generally comparable to the ordinary commute to work. Injuries arising in the course of normal travel for subsequent treatment are generally not compensable. For example, if a worker suffering from a compensable injury is subsequently injured in the course of travel in the following circumstances, it is not compensable:

- (a) attending the office of the attending physician for advice, examination or treatment;
- (b) attending for x-ray examinations or laboratory tests when associated with a visit to the office of the attending physician and not involving a special journey from home;
- (c) attending the office of a medical specialist in connection with a course of treatments by such a specialist;
- (d) attendances at the out-patient department of a hospital or a private physiotherapist for a course of therapy treatments;
- (e) travel to a drugstore for the purchase of drugs or other medical supplies;
- (f) travel to an optician or optometrist, prosthetist, shoemaker or hearing aid dealer in connection with medical supplies or the fulfillment of prescriptions.

The heading also includes any other types of visits or attendances which are part of a routine (analogous to travelling to and from work) or which are analogous to personal shopping.

Apart from routine travel in connection with subsequent treatment, a worker may sometimes be injured in the course of a special and exceptional journey undertaken as a result of the compensable injury. The following headings illustrate the point.

## 1. Emergency Transportation

Where a compensable injury has just occurred and a worker is being transported to a hospital or other place of emergency treatment, and a further injury occurs in the course of such transportation, the further injury is also compensable. This is so whether the worker is travelling on foot, by ambulance, by automobile, by aircraft, or by any kind of vehicle; and it is so regardless of the ownership of the vehicle, and regardless of whether the worker is driving the vehicle or being carried as a passenger.

## 2. Treatment-Related Vehicles

If a worker is travelling to or from a place of treatment for a compensable injury and sustains a further injury while travelling in a vehicle that is provided for that purpose by an institution engaged in the provision of treatment, or in the provision of a vehicle for the conveyance of patients for treatment, the injury is compensable.

## 3. Exceptional Travel for Subsequent Treatment

This heading relates to situations where a worker is travelling by prearranged appointment to a place of exceptional medical treatment, or for an exceptional examination. In these cases, an injury arising out of travel to or from that place of treatment is compensable. The following situations illustrate this point.

- (a) Travelling to a hospital for admittance as an inpatient, or travelling home following discharge from hospital as an inpatient.
- (b) Travelling to any other place of special treatment that involves living away from home for the duration of the treatment.
- (c) Travelling in relation to a referral by the attending physician to a specialist for a special examination or treatment.
- (d) Travelling for x-ray examination or laboratory tests where this involves a special journey separate from any attendance for routine treatment.
- (e) Travelling to a special place of paramedical attention, or a social or rehabilitation agency in connection with assistance in the diagnosis, handling, treatment or care of medical or rehabilitation problems related to the compensable injury on referral by the attending physician, or by the Board.

- (f) Travelling on referral by a physician or qualified practitioner to another physician or qualified practitioner for a second opinion.
- (g) Travelling for a medical examination at the Board by prearranged appointment with the Board, or for a medical examination elsewhere approved by the Board in connection with a compensable injury.

In the examples in items 1-3 above, the further injury is compensable because it is sufficiently connected to the original work injury as to form part of that injury. The further injury is therefore considered to arise out of and in the course of employment.

**EFFECTIVE DATE:** February 1, 2004

**APPLICATION:** All decisions, including appellate decisions, made on or after February 1, 2004 regardless of the date of the original work injury or the further injury.

## **#22.20 Subsequent Injuries Occurring Otherwise than in the Course of Treatment**

Where a worker has a pre-existing non-compensable condition which is aggravated and rendered disabling by a work injury, the Board does not deny a claim for compensation just because the injury would have caused no significant problems if there had been no pre-existing condition. The Board accepts that it was the injury that rendered that condition disabling and pays compensation accordingly. The corollary of this is that, where a worker has a compensable condition which is rendered disabling by an aggravating incident occurring outside of work, the worker's claim for the compensable condition is not re-opened just because the incident would not have been significant if that condition had not existed. The Board recognizes rather that it was the non-work incident that produced the disability for which compensation is claimed. The only exception to this is where the compensable condition actually causes the fall or other incident which brought about the aggravation.

Where the subsequent injury occurs at a time when the claimant is still recovering from a previous work injury, the principles set out in #22.14 apply.

### **#22.21 *Activities on Board Premises or at Other Premises under Board Sponsorship***

Where a worker is attending at the Board by prearranged appointment made with an officer of the Board for the purpose of an enquiry, interview or discussion in respect of a claim which has been accepted, or which is subsequently accepted,

and where the worker suffers a further injury arising out of and in the course of travel to or from such an appointment, the further injury will be compensable.

The same rules apply where a worker is attending by prearranged appointment to meet with the Board's Review Division, the Workers' Compensation Appeal Tribunal or a Medical Review Panel.

Where an injured worker is reinjured while undergoing a course of rehabilitation training sponsored by the Board, the second injury may be regarded as a compensable consequence of the first injury. (11)

In all of these instances the place of treatment, appointment or rehabilitation is analogous to a place of employment. The further injury is compensable because it is sufficiently connected to the original injury as to form part of that injury and, therefore, is considered to arise out of and in the course of employment.

**EFFECTIVE DATE:** February 1, 2004

**APPLICATION:** All decisions, including appellate decisions, made on or after February 1, 2004 regardless of the date of the original work injury or the further injury.

### *#22.22 Suicide*

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

In a Board decision, a claim was made by a widow that her husband had committed suicide because of a state of depression and despair resulting from a compensable injury occurring four years earlier. The claim was disallowed. It was possible that the accident might have had some significance. Any adverse experience might have had some significance. But the real test was: Was the suicide something which would have been unlikely to occur if there had been no work accident? On the facts, the suicide was something which might well have occurred in any event rather than something that would have been unlikely without the accident. Bearing in mind the deceased's history of mental disorder and the sparsity of other evidence of causal connections between the work injury and the suicide, it did not appear that the accident had a sufficient degree of causative significance to warrant the conclusion that the death resulted from the compensable injury.

### *#22.23 Criminal Proceedings*

As an example, the claimant, a caretaker of an apartment building, became involved in a fight with a tenant and received injuries for which a compensation claim was accepted. The claimant suffered psychological problems as a result of criminal proceedings taken by the Crown for assault and his employer's suspension of him from his employment pending the outcome of the proceedings. If the charges had not been laid and the claimant had not been

suspended, he would not have been disabled. While there was an undeniable link between the actions of the Crown and his employer with the compensable incident, it was too tenuous to make the disability which flows from these actions compensable. The reaction to the laying of charges did not arise out of and in the course of employment, but from the intervening decision of the Crown, a party extraneous to the employer/employee relationship, to proceed with criminal charges. The disability flowing from that decision was not compensable.

## **#22.30 Diseases or Other Conditions Resulting from Trauma**

Compensation coverage extends not just to the immediate physical damage caused by the injury, but to any separate diseases or conditions which arise directly from it.

### *#22.31 Multiple Sclerosis*

While the cause of multiple sclerosis is unknown, there has been much medical literature on factors which may precipitate the onset of the disease in an already predisposed person. One of these factors is a traumatic injury. There is a medical authority for the view that multiple sclerosis may be considered to have been precipitated by a traumatic injury if:

- (a) the symptoms and signs of the disease first appeared in the injured part of the body;
- (b) the symptoms and signs of the disease occurred shortly after the injury; and
- (c) there has been no preceding history of neurologic deficit.

### *#22.32 Cancer*

In claims where trauma is alleged to be the cause of cancer, the following five criteria (12) should be satisfied before a cancer can be even remotely considered to be traumatically induced.

1. Authenticity and adequacy of trauma.
2. Previous integrity of the wounded part.
3. Origin of tumour at exact point of injury.
4. Reasonable time limit between injury and time of appearance of tumour.
5. Positive diagnosis of the presence and nature of the tumour.

Recent reviews of the medical literature have been completed to ascertain whether or not there is new evidence to associate trauma as a causal agent in cancer.

Except in the case of skin cancer, there is little firm evidence to associate trauma with cancer as an etiologic agent. In particular, reviews of several studies (13) of bone cancer fail to establish a causal relationship between trauma and cancer, although there is general recognition of what has been called “traumatic determinism”, i.e. that an injury may call the person’s attention to a pre-existing tumour.

### *#22.33 Psychological Problems*

Psychological problems arising from a physical or psychological injury are acceptable as compensable consequences of the injury. However, there must be evidence that the claimant is psychologically disabled. It cannot be assumed that such a disability exists simply because the claimant has unexplained subjective complaints or is having difficulty in psychologically or emotionally adjusting to any physical limitations resulting from the injury.

When a claim is submitted for psychological problems resulting directly from the claimant’s employment without the occurrence of any physical trauma, reference should be made to #13.20 and #32.10.

When a psychological impairment becomes permanent, it will be necessary to determine whether there is entitlement to a permanent disability pension. The decision-making procedure for assessing entitlement to a permanent disability award for psychological impairment is found in #38.10.

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

### *#22.34 Alcoholism and Drug Dependency Problems*

Where it is claimed that an alcohol problem may have arisen out of and as a result of a compensable injury, the compensability of the 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 the problem, this investigation would normally include a reference to a Board Psychologist. The decision on acceptability will however be made by the Claims Adjudicator.

Any pre-existing alcohol problem can be treated in the same way as any other pre-existing condition. The Claims Adjudicator will have to decide whether the claimant’s problems are simply a continuation of the previous problems or have been worsened by the injury.

The above procedure would also apply if a claimant whose alcohol problems have previously been accepted by the Board seeks to re-open the claim because of further problems of this type. The request would have to be investigated and if appropriate, a reference made to a Board Psychologist, and a determination made as to whether the current problems are related to the injury and the previous problem, or to some pre-existing condition or other cause.

This policy also has general application in the adjudication of drug dependency problems. For the policy regarding the prescription of narcotics and other drugs of addiction, reference should be made to #77.30.

For the Board's policy toward applications for compensation for alcoholism as an occupational disease, reference should be made to #32.15.

### *#22.35 Pain and Chronic Pain*

A worker's pain symptoms may be accepted as compensable where medical evidence indicates that the pain results as a consequence of a work injury or occupational disease. This policy discusses the scope of coverage in cases where pain is accepted as compensable. Pain is not assessed as a psychological impairment.

#### 1. Definitions:

Pain is an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage. It includes cognitive, affective, behavioural and physiological components.

The Board recognizes three main stages of pain:

- i. Acute pain is pain that coincides with a traumatic injury or disease and the early stages of recovery. In the vast majority of cases acute pain eventually resolves, either spontaneously or with some form of treatment.
- ii. Subacute pain is pain that an injured worker continues to experience four to six weeks after a traumatic injury or disease.
- iii. Chronic pain is pain that persists six months after an injury or occupational disease and beyond the usual recovery time for that injury or disease. Chronic pain is further distinguished as either specific or non-specific as set out in policy item #39.01, "Chronic Pain".

Usual recovery times for injuries or diseases are based on medical protocols and procedures adopted by the Rehabilitation and Compensation Services Division. These medical protocols set out the points in time, after an injury, when a worker should regain pre-accident functional ability, or reach maximum medical recovery.

In determining the appropriate recovery time for an injury, the Board officer may, in consultation with a Board Medical Advisor, consider the medical protocols as well as other factors such as the worker's pre-injury health status and any treatments received that would likely impact the recovery time of the work injury.

## 2. Early Intervention – Acute and Subacute Pain:

Early intervention involves the provision of early return to work assistance and/or focused multidisciplinary treatment and rehabilitation, to expedite the worker's medical recovery and return to work. Early intervention at the acute or subacute stages of pain is essential as both rehabilitation and prevention measures in deterring the development of chronic pain. Studies indicate that even with some residual or recurrent pain symptoms, workers do not have to wait until they are completely pain free to return to work.

Early intervention should be incorporated into the worker's rehabilitation plan. (See policy item #88.00, "Programs and Services")

### (a) Early Return to Work Assistance

In the majority of cases following an injury, a worker is able to return to work shortly after an injury without Board assistance. The provision of early return to work assistance for a worker experiencing acute or subacute pain that is affecting the worker's return to work efforts will be considered as soon as the worker is medically able to participate. A Board officer will coordinate the worker's early return to work plan in collaboration with the worker, the attending physician, a Board Medical Advisor, the employer and treating clinicians as needed.

In developing an early return to work plan, the Board officer may consider the worker's entitlement to vocational rehabilitation programs and services such as graduated return to work assistance, placement assistance and work site/job modifications where the Board officer concludes that they will assist in a worker's return to work. (See Chapter 11, "Vocational Rehabilitation Services")

### (b) Multidisciplinary Treatment and Rehabilitation

In certain cases, the Board officer may consider it appropriate to refer the worker for focused multidisciplinary treatment and/or rehabilitation intervention. These interventions are preferred in cases where the Board officer concludes that they will assist in the worker's early return to work. The Board officer may also consider these interventions where they will assist in preventing the onset of chronic pain.

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

(c) Early Intervention - Chronic Pain

In all cases where a Board officer 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.

3. 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 29 or 30 of the *Act*.

Where chronic pain is considered by the Board officer to become permanent, entitlement to permanent partial disability benefits may be considered under section 23 of the *Act*.

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

**#23.00 REPLACEMENT AND REPAIR OF ARTIFICIAL APPLIANCES, EYEGASSES, HEARING AIDS, AND DENTURES – SECTION 21(8)**

The Board may assume the responsibility of replacement and repair of

- (a) artificial appliances, including artificial members damaged or broken as the result of an accident arising out of and in the course of the employment of the worker; and

- (b) eyeglasses, dentures and hearing aids broken as a result of an accident arising out of and in the course of employment if that breakage is accompanied by objective signs of personal injury, or, where there is no personal injury, if the accident is otherwise corroborated and the Board is satisfied the worker was not at fault. (15)

In no other circumstances can the Board accept responsibility for damage to a worker's personal possessions.

With the exception of eyeglasses, no compensation for broken appliances, etc. can be paid under the *Government Employees Compensation Act* to employees of the Federal Government unless the breakage resulted from an accident that also caused personal injury. In claims for broken eyeglasses, the adjudication principles used are the same as those which apply under the provincial *Workers Compensation Act*.

### **#23.10 Meaning of Authority in Section 21(8)**

The payment of compensation under Section 21(8) is not a legal right. The section merely confers authority on the Board to pay the compensation provided for. Whether the Board exercises its authority or not is within its discretion. Compensation will be payable in respect of all claims which fall within the terms of the section.

### **#23.20 Appliances Covered by Section 21(8)**

The reference to "eyeglasses" in Section 21(8)(b) includes contact lenses.

Where an injury involves damage to dental crowns and fixed bridgework, they are regarded as part of the natural anatomy for the purpose of adjudication.

Therefore such claims are adjudicated as claims for personal injury under Section 5(1) rather than under Section 21(8).

### **#23.30 Meaning of Damaged or Broken under Section 21(8)**

Section 21(8) refers to items being "damaged" or "broken". However, suppose an accident occurs which causes the loss of a worker's glasses. For instance, they may "fly off" somewhere unknown or be dropped into a place which is inaccessible. Where this follows from an "accident" as defined in #23.40 below, and it is reasonable to assume that, though lost, the worker's glasses are broken, Section 21(8) may be applied as if they are in fact "broken".

## **#23.40 Meaning of Accident under Section 21(8)**

Compensation is not payable under Section 21(8) unless the damage or breakage results from an accident arising out of and in the course of the claimant's employment.

The meaning of "accident" in this section was considered in a Board decision where it was stated:

"It appears to us that the purpose of Section 21(8) is to provide a form of insurance protection against damage to eyeglasses through chance events. In this case, however, the damage was nothing unexpected. The replacement of eyeglasses in the plant where this occurred is a predictable routine and part of the normal operating cost of the type of work done by the claimant in that plant. Usually the employer contributes to the replacement of eyeglasses by men working in this situation, and the claim came about only because the claimant required replacement more frequently than the employer regarded as reasonable.

In this situation, the cost of replacing eyeglasses should be regarded as part of the wear and tear of industrial activity rather than being classified as damage by accident."

It should not be concluded from this that if a worker's glasses are broken as a result of a chance event arising out of and in the course of employment, compensation will automatically be payable under Section 21(8). The section is limited to situations where there is a personal injury, the consequences of which include breakage or damage to this apparatus, or there is a direct injury to this apparatus which might also have caused a personal injury. To be an "accident" for the purposes of Section 21(8) a chance event must be such that if it does not actually cause the claimant personal injury, it must have had the potential for doing so. In other words, there must have been a reasonable probability that the accident could have caused the claimant personal injury. No compensation is payable under Section 21(8) if the accident involved the damaged article only and there was no reasonable probability of its harming the claimant.

Consider the following examples:

- A. The worker is wearing glasses, or is not wearing them but has them about his or her person, for instance, in a pocket, and they are broken when an object flies into or falls upon them, some harmful liquid splashes onto them, the worker slips and falls to the ground, or bumps his or her head against a wall or some machinery. Even if such an accident does not injure the worker, there is usually an "accident" for the purposes of Section 21(8) as there is usually a reasonable probability that it could have injured the worker.

- B. The worker drops his or her glasses, they fall out of a pocket, or off his or her face, or the worker knocks them off when removing clothing or headwear, and they break on impact with the ground or when something falls on them, or the worker takes off the glasses and places them in a position where they are broken. If such an accident does not injure the worker, there is usually not an “accident” for the purposes of Section 21(8) as there is not usually a reasonable probability that it could have injured the worker.
- C. Where breakage of eyeglasses falling within Example B. follows immediately after an accident within the meaning of Section 21(8), i.e. one arising out of and in the course of employment which injured or could with reasonable probability have injured the worker, the breakage may be considered to have resulted from this accident. For instance, a worker slips and falls, and the glasses fly off and are run over by a truck, or some harmful liquid splashes into the worker’s face and while washing his or her face, the worker places the glasses in a position where they are broken or the glasses are dropped while removed for cleaning. The breakage in these cases might be considered to have resulted from the fall and the splashing of the liquid. The question of whether the worker was at fault would have to be considered.

### **#23.50 Meaning of Corroboration in Section 21(8)**

In the case of eyeglasses, dentures, and hearing aids, where the breakage is not accompanied by objective signs of personal injury, the accident must be corroborated.

Corroboration is evidence other than that of the claimant which renders more probable the truth of the claimant’s testimony on a material point. As the Act requires that the accident be corroborated, it is not sufficient for the corroborating evidence simply to confirm the existence of the broken glasses.

Corroboration means that there must be some evidence that is independent of the report or testimony of the claimant. Thus, there is not normally corroboration where the only evidence is the statement of the claimant, coupled with the evidence of another person who had no knowledge of the facts, but is simply able to report a similar statement of the claimant made to the person at an earlier time.

For example, suppose a worker who had just had his or her glasses broken as a result of an accident arising out of and in the course of employment goes immediately to the employer, reports the accident and shows the employer the broken glasses. No matter how shortly after the accident this occurs, a few minutes for instance, the employer’s evidence as to this report is corroboration as to the breakage of the glasses, not the accident from which it may have resulted.

The employer's evidence as to the occurrence of the accident is not evidence independent of the report or testimony of the claimant.

A possible exception to this rule was recognized in cases where the claimant makes a spontaneous exclamation, or reports an event momentarily after its occurrence so that the immediacy of the report adds to its credibility. This exception was explained in a Board decision as a reference to what is known in the law of evidence as "res gestae", where the facts speak through the party. More particularly, this means declarations uttered by the claimant simultaneously or almost simultaneously with the occurrence of the accident, so that the declaration forms part of the circumstances of the accident. For example, suppose a worker is hit in the face and the worker's glasses are damaged by a splinter. The worker utters an exclamation of surprise or shock at the moment of impact which indicates that the glasses have been damaged as a result of the accident. This is overheard by someone standing near who did not witness the accident. The repetition of that exclamation by the person who overheard it might amount to corroboration.

Normally corroboration consists of the evidence of witnesses to the accident. Where there are no such witnesses it will, in practice, be very difficult to provide corroboration of an accident's occurrence. It will therefore be very difficult for a person working alone to establish corroboration. However, it may be possible that a lack of witnesses could, in an appropriate case, be remedied by other evidence. This evidence would have to be independent of the report or testimony of the claimant and corroborate the occurrence of the accident as well as the breakage.

In one claim, for instance, the eyeglasses of a nurse in a mental hospital were broken while the nurse was trying to restrain a patient. There were no witnesses to the breakage, but some persons entered the room shortly after to see the glasses broken on the floor and the struggle between nurse and patient continuing. It was considered that the accident was sufficiently corroborated by the witnessing of the struggle. However, if those witnesses had entered after the struggle had ceased the question may be more doubtful. It would probably depend on whether the appearance of the nurse, the patient, and the room, without regard to the nurse's statement as to what happened, made it clear that the struggle had occurred and had resulted in the broken glasses. Obviously, corroboration would be more difficult, the longer after the event the witnesses entered the room.

The above policies and procedures regarding situations where no personal injury occurs also apply to claims administered under the *Government Employees Compensation Act*.

## **#23.60 Meaning of Fault in Section 21(8)**

Where breakage of eyeglasses, dentures, or hearing aids is not accompanied by objective signs of personal injury, not only must the accident causing the breakage be corroborated, but the Board must be satisfied that the worker was not “at fault”.

The question of whether the worker was “at fault” arises whenever some negligent or careless act or omission of the worker has contributed to the breakage. However, not all such acts or omissions will result in the worker’s being “at fault”. In the normal situation, a worker’s negligence or carelessness will combine with something in the employment to cause the breakage. Then the question becomes one of weighing the worker’s careless act or omission against the employment causes of the damage. If, after weighing these factors, it is considered that the worker’s negligence was the predominant cause of the breakage, the worker must be held to be at fault. If, although the worker’s negligence contributed to the breakage, it is felt that the predominant cause was something in the employment, the worker is not to be considered at fault.

In weighing the worker’s carelessness against any employment causes of the breakage of eyeglasses, it was considered that minor lapses of attention, which it is reasonable to expect from the average worker in the normal course of work, would not generally outweigh the employment aspects of the situation. Therefore, if, for example, a worker trips over or bumps into something in the course of employment, the worker will not usually be held to be at fault because of carelessness in not looking where he or she was going. On the other hand, if, for example, the claimant tripped or bumped into something as a result of horseplay or some other misconduct or unauthorized activity, or had previously been warned about this sort of conduct, such activity might be said to be the predominant cause of any breakage of eyeglasses.

Consider also the example given in #23.40, Example C, of a worker whose glasses are damaged when dropped or taken off following an accident within the meaning of Section 21(8). While the worker might be thought careless in dropping the glasses or placing them in an unsafe place, it was the accident which placed the worker in the situation where it was necessary to take them off, and this put them at risk of being broken as a result of carelessness. Assuming that the worker was not “at fault” in regard to the original accident, it would usually be unfair to regard the worker’s carelessness as the predominant cause of the breakage. This would be particularly so if the employment involved the worker in having wet or greasy hands or some other circumstance which would make the worker more prone to drop the glasses or give no opportunity to find a safe place to put them. There may, on the other hand, be cases where the worker’s carelessness clearly outweighs the effect of any employment accident.

## **#23.70 Compensation Payable under Section 21(8)**

When a claim satisfies the requirements of Section 21(8), the claimant is reimbursed the amount charged by the supplier or repairer of the appliance in question. The amount payable is not limited to what the Board would pay for a similar appliance required for a worker as the result of an injury covered by Section 5(1) of the Act.

A claimant is not entitled to wage-loss benefits under Section 21(8) when there is a delay in replacing the broken or damaged appliance and the claimant is unable to work without it. Nor is wage loss payable where the worker has to take off time from work in order to be fitted for new eyeglasses and to pick them up when ready.

## **#24.00 FEDERAL GOVERNMENT EMPLOYEES**

Section 4(1) of the *Government Employees Compensation Act* provides that “compensation shall be paid to . . . an employee who is caused personal injury by an accident arising out of and in the course of his employment . . . and . . . the dependants of an employee whose death results from such an accident.” Section 4(4) applies a similar provision to railway employees of the Federal Government. The employees covered by these sections were discussed in #8.10.

The employee or the dependants are, notwithstanding the nature or class of the employment, entitled to receive compensation at the same rate and under the same conditions as are provided under the law of the province where the employee is usually employed. (16)

Compensation entitlement is determined by “the same board, officers or authority as is or are established by the law of the province for determining compensation for workmen and dependants of deceased workmen” other than Federal employees. (17)

The phrase “by an accident” in Subsection 4(1) does not require that there be a clearly ascertainable incident or series of incidents which caused the injury. Injuries that arise gradually over time or “by process” are not excluded by this subsection. The injury itself can be the “accident” for the purpose of Section 4. Thus, the test for Federal employees in B.C. under Subsection 4(1) is, in effect, the same as the test for other workers in B.C. under Subsection 5(1) of the B.C. Act. (18)

The *Government Employees Compensation Act* applies to an accident occurring or a disease contracted within or outside Canada. (19)

For the purposes of the *Government Employees Compensation Act*, the place where an employee is usually employed is the place where the employee is appointed or engaged to work.

Where an employee is usually employed in the Yukon Territory or the Northwest Territories, the employee is deemed to be usually employed in the Province of Alberta. (20)

Where an employee, other than a person locally engaged outside Canada, is usually employed outside Canada, the employee is deemed to be usually employed in the Province of Ontario. (21)

## NOTES

- (1) Appeal Division Decision No. 92-0743; #24.00
- (2) See #13.12
- (3) *Law of Workmen's Compensation*, A. Larson, 1972, Vol. I, para. 23.61
- (4) See #2.23
- (5) Larson, para. 25.00
- (6) See #19.31
- (7) See #19.31
- (8) See #21.10
- (9) See #78.11
- (10) See #44.00
- (11) See #88.54 and #115.30
- (12) Ewing, J. Modern attitude toward traumatic cancer. *Arch. Path.* 19:690-728, 1935
- (13) Pritchard et al. The Etiology of Osteosarcoma. *Clin. Orthoped. and Rel. Res.* 111:14-22, September 1975;  
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 Cl. Proc.* 49:157-163, March 1974
- (14) ~~See Chapter 5-DELETED~~
- (15) S.21(8)
- (16) *Government Employees Compensation Act*, S.4(2)
- (17) *Government Employees Compensation Act*, S.4(3)
- (18) Appeal Division Decision No. 92-0743
- (19) *Government Employees Compensation Act*, S.3(2)
- (20) *Government Employees Compensation Act*, S.5
- (21) *Government Employees Compensation Act*, S.6

