



WORKERS' COMPENSATION BOARD OF BC

Policy and Research Division

Mailing Address

PO Box 5350 Stn Terminal
Vancouver BC V6B 5L5

Location

6951 Westminster Highway
Richmond BC

Telephone 604 276-5160
Fax 604 279-7599

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Update 2004 – 4

TO: HOLDERS OF THE *REHABILITATION SERVICES & CLAIMS MANUAL – VOLUME I*

This update of the *Rehabilitation Services & Claims Manual* contains amendments to the *Manual* implemented since update 2004 – 3.

This amendment includes:

- Table of Contents
- policy item #15.50, *Herniae*
- policy item #26.21, *Schedule B Presumption*
- Revisions to Appendix I. The Index of Retired Decisions from Volumes 1 – 6 (Decisions No. 1 – 423) of the *Workers' Compensation Reporter* has been updated.

A summary of the amendments is attached and the amended pages are included as part of the package.

If you have any questions regarding subscription information for updates to the *Rehabilitation Services & Claims Manual*, please call WCB Customer Service at 1-866-271-4879.

Margaret Eckenfelder
Vice-President
Policy and Research Division

Attachments

Rehabilitation Services & Claims Manual, Volume I

SUMMARY OF AMENDMENTS – Update 2004 – 4

Table of Contents	Pages i to iv	Updated.
Chapter 1 Addendum	Pages 13 to 14	Updated.
Chapter 3	Pages 11 to 16	Policy item #15.50 Effective date statements added to refer users of the <i>Manual</i> to Volume II effective June 1, 2004.
Chapter 4	Pages 5 to 8	Typographical and formatting corrections
	Pages 9 to 12	Policy item #26.21 Revisions to <i>Schedule B Presumption</i> to remove statements regarding certain long latency periods. Effective June 1, 2004.
Appendix 1	Pages 1, 16 to 17	Revisions to the Index of Retired Decisions from Volumes 1 – 6 (Decisions No. 1 – 423) of the <i>Workers' Compensation Reporter</i> .

TABLE OF CONTENTS

	Page
CHAPTER 1 — SCOPE OF VOLUME I OF THIS <i>MANUAL</i>	
#1.00 INTRODUCTION	1-1
#1.01 Legislative Amendments	1-1
#1.02 Scope of Volume I and Volume II of this <i>Manual</i>	1-2
#1.03 Scope of Volumes I and II in Relation to Benefits for Injured Workers	1-2
#1.10 The Persons Covered by the Act	1-5
#1.20 The Conditions under which Compensation is Payable	1-5
#1.30 The Type and Amount of Compensation	1-5
#1.40 Charging of Claims Costs	1-5
#2.00 WORKERS' COMPENSATION BOARD	1-6
#2.10 Jurisdiction over Claims Adjudication	1-6
#2.20 Application of the <i>Act</i> and Policies	1-6
ADDENDUM	1-9
NOTES	1-15
CHAPTER 2 — WORKERS AND EMPLOYERS COVERED BY THE ACT	
#3.00 INTRODUCTION	2-1
#4.00 EXEMPTIONS AND EXCLUSIONS FROM COVERAGE	2-1
#5.00 COVERAGE OF WORKERS	2-1
#6.00 DEFINITION OF "WORKER" AND "EMPLOYER"	2-2
# 6.10 Nature of Employment Relationship	2-2
# 6.20 Voluntary and Other Workers Who Receive No Pay	2-2
# 7.00 SPECIFIC INCLUSIONS IN DEFINITION OF WORKER	2-3
# 7.10 Members of Fire Brigades	2-3
# 8.00 ADMISSION OF WORKERS, EMPLOYERS, AND INDEPENDENT OPERATORS	2-3
#8.10 Federal Government Employees	2-3
CHAPTER 3 — COMPENSATION FOR PERSONAL INJURY	
#12.00 INTRODUCTION	3-1
#13.00 PERSONAL INJURY	3-1
#13.10 Distinction Between an Injury and Disease	3-1
#13.12 Disablement from Vibrations	3-3
#13.20 Psychological Impairment	3-3
#14.00 ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT	3-3
#14.10 Presumption	3-4
#14.20 Occurrence or Non-Occurrence of a Specific Incident	3-5

#15.00	NATURAL CAUSES	3-6
	#15.10 Worker Has Pre-existing Deteriorating Condition	3-6
	#15.15 Firefighters and Heart Injury	3-7
	#15.20 Injuries Following Motions at Work	3-9
	#15.30 Recurring Temporary Disabilities	3-11
	#15.40 Ganglia	3-12
	#15.50 Herniae	3-12
	#15.51 Prior Compensable and Non-Compensable Herniae	3-16
	#15.60 Shoulder Dislocations	3-17
#16.00	UNAUTHORIZED ACTIVITIES	3-17
	#16.10 Intoxication or Other Substance Impairment	3-17
	#16.20 Horseplay	3-19
	#16.30 Assaults	3-20
	#16.40 Injury While Doing Another Persons Job	3-20
	#16.50 Emergency Actions	3-21
	#16.60 Serious and Willful Misconduct	3-22
#17.00	HAZARDS ARISING FROM NATURE	3-23
	#17.10 Insect Bites	3-23
	#17.20 Plant Stings	3-23
	#17.30 Frostbite, Sunburn and Heat Exhaustion	3-24
	#17A.10 Commencement of Employment Relationship	3-24
	#17A.20 Termination of Employment Relationship	3-25
#18.00	TRAVELLING TO AND FROM WORK	3-25
	#18.01 Entry to Employers Premises	3-25
	#18.10 Road Leading to Employers Premises	3-26
	#18.11 Captive Road Doctrine	3-26
	#18.12 Special Hazards of Access Route	3-28
	#18.20 Provision of Transportation by Employer	3-29
	#18.21 Provision of Vehicle by Employer	3-29
	#18.22 Payment of Travel Time and/or Expenses by Employer	3-30
	#18.30 Journey to Work Also Has Employment Purpose	3-31
	#18.31 Worker On Call	3-31
	#18.32 Irregular Starting Points	3-32
	#18.33 Deviations From Route	3-33
	#18.40 Travelling Employees	3-34
	#18.41 Personal Activities During Business Trips	3-34
	#18.42 Trips Having Business and Non-Business Purpose	3-36
#19.00	USE OF FACILITIES PROVIDED BY THE EMPLOYER	3-36
	#19.10 Bunkhouses	3-36
	#19.20 Parking Lots	3-37
	#19.30 Lunchrooms	3-39
	#19.31 Injury Results from Claimant's Personal Property	3-39
	#19.40 Medical Facilities	3-39

	#19.41	Adverse Reactions to Inoculations or Injections	3-40
#20.00		EXTRA-EMPLOYMENT ACTIVITIES	3-41
	#20.10	Participation in Competitions	3-41
	#20.20	Recreational, Exercise or Sports Activities	3-42
	#20.30	Educational or Training Courses	3-46
	#20.40	Provision of Clothing and Equipment Required for Job	3-46
	#20.41	Injuries Resulting from Workers Clothing or Footwear	3-47
	#20.50	Fund Raising, Charitable or Other Similar Activities	3-47
#21.00		PERSONAL ACTS	3-48
	#21.10	Lunch, Coffee and Other Breaks	3-48
	#21.20	Vacations	3-50
	#21.30	Payment of Wages or Salary	3-50
	#21.40	Acts for Personal Benefit of Principals of Business	3-51
#22.00		COMPENSABLE CONSEQUENCES OF WORK INJURIES	3-52
	#22.10	Further Injury or Increased Disablement Resulting from Treatment	3-52
	#22.11	Disablement Caused by Surgery	3-52
	#22.12	Acceleration of Treatment	3-53
	#22.13	Activities at Home	3-54
	#22.14	Treatment Unrelated to Injury	3-54
	#22.15	Travelling To and From Treatment	3-54
	#22.20	Subsequent Injuries Occurring Otherwise than in the Course of Treatment	3-57
	#22.21	Activities on Board Premises or at Other Premises under Board Sponsorship	3-57
	#22.22	Suicide	3-57
	#22.23	Criminal Proceedings	3-58
	#22.30	Diseases or Other Conditions Resulting from Trauma	3-58
	#22.31	Multiple Sclerosis	3-58
	#22.32	Cancer	3-59
	#22.33	Psychological Problems	3-59
	#22.34	Alcoholism and Drug Dependency Problems	3-60
	#22.35	Pain and Chronic Pain	3-60
#23.00		REPLACEMENT AND REPAIR OF ARTIFICIAL APPLIANCES, EYEGASSES, HEARING AIDS, AND DENTURES – SECTION 21(8)	3-63
	#23.10	Meaning of Authority in Section 21(8)	3-64
	#23.20	Appliances Covered by Section 21(8)	3-64
	#23.30	Meaning of Damaged or Broken under Section 21(8)	3-64
	#23.40	Meaning of Accident under Section 21(8)	3-64
	#23.50	Meaning of Corroboration in Section 21(8)	3-66
	#23.60	Meaning of Fault in Section 21(8)	3-67
	#23.70	Compensation Payable under Section 21(8)	3-68
#24.00		FEDERAL GOVERNMENT EMPLOYEES	3-69
NOTES			3-71

CHAPTER 4 — COMPENSATION FOR OCCUPATIONAL DISEASE

#25.00	INTRODUCTION	4-1
	#25.10 Legislative Requirements	4-1
#26.00	THE DESIGNATION OR RECOGNITION OF AN OCCUPATIONAL DISEASE	4-2
	#26.01 Recognition by Inclusion in Schedule B	4-3
	#26.02 Recognition under Section 6(4)(b)	4-3
	#26.03 Recognition by Regulation of General Application	4-4
	#26.04 Recognition by Order Dealing with a Specific Case	4-6
	#26.10 Suffers from an Occupational Disease	4-7
	#26.20 Establishing Work Causation	4-8
	#26.21 Schedule B Presumption	4-8
	#26.22 Non-Scheduled Recognition and Onus of Proof	4-10
	#26.30 Disabled from Earning Full Wages at Work	4-11
	#26.50 Natural Degeneration of the Body	4-13
	#26.55 Aggravation of a Disease	4-13
	#26.60 Amending Schedule B	4-14
#27.00	ACTIVITY-RELATED SOFT TISSUE DISORDERS OF THE LIMBS	4-15
	#27.10 ASTDs Recognized by Inclusion in Schedule B	4-17
	#27.11 Bursitis	4-17
	#27.12 Tendinitis and Tenosynovitis	4-20
	#27.13 Hand-Arm Vibration Syndrome (HAVS)	4-23
	#27.14 Hypothenar Hammer Syndrome	4-26
	#27.20 Tendinitis/Tenosynovitis and Bursitis Claims Where No Presumption Applies	4-26
	#27.30 ASTDs Recognized by Regulation	4-29
	#27.31 Epicondylitis	4-30
	#27.32 Carpal Tunnel Syndrome	4-30
	#27.33 Other Peripheral Nerve Entrapments and Stenosing Tenovaginitis	4-32
	#27.34 Disablement from Vibrations	4-32
	#27.35 Unspecified or Multiple-Tissue Disorders	4-32
	#27.40 Risk Factors	4-33
#28.00	CONTAGIOUS DISEASES	4-39
	#28.10 Scabies	4-41
#29.00	RESPIRATORY DISEASES	4-42
	#29.10 Acute Respiratory Reactions to Substances with Irritating or Inflammatory Properties	4-42
	#29.20 Asthma	4-43
	#29.30 Bronchitis and Emphysema	4-45
	#29.40 Pneumoconioses and Other Specified Diseases of the Lungs	4-45
	#29.41 Silicosis	4-45
	#29.42 Meaning of Disabled from Silicosis	4-46

Subject	Policy or Item #	Comments
Disablement Caused by Surgery	#22.11	For all decisions, including appellate decisions, on or after February 1, 2004 refer to policy item #22.11 of Volume II of this <i>Manual</i> regardless of the date of the original work injury or the further injury.
Travelling To and From Treatment	#22.15	For all decisions, including appellate decisions, on or after February 1, 2004 refer to policy item #22.15 of Volume II of this <i>Manual</i> regardless of the date of the original work injury or the further injury.
Activities on Board Premises or at Other Premises under Board Sponsorship	#22.21	For all decisions, including appellate decisions, on or after February 1, 2004 refer to policy item #22.21 of Volume II of this <i>Manual</i> regardless of the date of the original work injury or the further injury.
Injury Caused by Worker or Employer	#111.10	For all decisions, including appellate decisions, on or after February 1, 2004 refer to policy item #111.10 of Volume II of this <i>Manual</i> regardless of the date of the original work injury or the further injury.
Schedule B Presumption	#26.21	For all decisions, including appellate decisions, made on or after June 1, 2004. See resolution 2004/05/18-02 if more information is required.
Herniae	#15.50	For all decisions, including appellate decisions, made on or after June 1, 2004, please refer to policy item #15.50, <i>Herniae</i> , in Volume II of the <i>RSCM</i> . See resolution 2004/05/18-03 if more information is required.

NOTES

- (1) Chapter 2
- (2) Chapter 8
- (3) Chapter 3
- (4) Chapter 4
- (5) Chapters 3 and 4
- (6) Chapter 3
- (7) Chapter 5
- (8) Chapter 6
- (9) Chapter 8
- (10) Chapter 10
- (11) Chapter 11
- (12) Chapter 17
- (13) S.1 S.80
- (14) S.1
- ~~(15) S.81 Deleted~~
- ~~(16) S.82 Deleted~~
- (17) S.96(1)
- ~~(18) Chapter 12 Deleted~~
- ~~(19) Chapter 13 Deleted~~

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.

Lyme Disease
Meningitis
Mononucleosis
Mumps
Plantar Fasciitis
Radial Tunnel Syndrome
Red Measles (Rubeola)
Ringworm
Rubella
Scabies
Serum Hepatitis
Shigellosis
Staphylococci Infections
Stenosing Tenovaginitis (Trigger Finger)
Streptococci Infections
Thoracic Outlet Syndrome
Toxoplasmosis
Typhoid
Vinyl Chloride Induced Raynaud's Phenomenon
Whooping Cough
Yersiniosis

It is important to distinguish between designation or recognition of an occupational disease under section 6(4)(b) or by regulation of general application, and the addition of a disease to Schedule B under section 6(4)(a). Where the Board concludes that a disease is more likely to occur in connection with a particular employment covered by the Act than elsewhere, it may be added to Schedule B (see policy item #26.01). On the other hand, where the Board concludes that a disease is sometimes due to the nature of a particular employment covered by the Act, but it does not appear that the disease is more likely to occur in connection with that employment than elsewhere (it is not something specific to that employment), the Board may designate or recognize the disease under section 6(4)(b) or by regulation of general application without the rebuttable presumption afforded by inclusion in Schedule B.

Several of the above contagious diseases are not likely to be “. . . due to the nature of any employment in which the worker was employed . . .” except for hospital employees, or workers at other places of medical care.

The authority under the *Act* to designate or recognize a disease under sections 6(4)(a), 6(4)(b) or by regulation of general application rests with the Board of Directors.

EFFECTIVE DATE: February 11, 2003 (as to deletion of reference to the former Governors)
APPLICATION: Not applicable.

#26.04 Recognition by Order Dealing with a Specific Case

The lack of prior designation or recognition by the Board of a disease as an occupational disease by any of the means specified in policy items #26.01, #26.02, or #26.03, does not mean a claim for such disease will not be considered on its merits. Such disease may not have been previously designated or recognized due to weak or a complete absence of medical and scientific information which causally associates such disease with employment. If the merits and justice of an individual claim for such a disease warrant its recognition as an occupational disease, the Board may do so “by order dealing with a specific case” (section 1).

The effect of such an order is to accept the claim for compensation purposes without establishing an institutional memory for decision-makers or an expectation for others who may suffer from that disease that the disease may be due to the nature of some employment. In other words, the disease will be recognized as an occupational disease limited to the specific facts of that individual claim.

This allows an avenue of recognition for unique, meritorious, individual disease claims. As the Board repeatedly encounters such claims for a particular disease, it may determine that a higher level of designation or recognition is warranted for that disease.

An Adjudicator upon investigating an individual claim may find that the condition suffered by the worker is not one listed in the first column of Schedule B, nor is it one which has been previously designated or recognized by the Board as an occupational disease under section 6(4)(b) or by regulation. If the Adjudicator concludes, after seeking appropriate input from both the worker (or their legal representative) and the employer (if a specific employer is identified) that the facts warrant recognition of the worker’s condition as an occupational disease, the Adjudicator will refer the claim with a recommendation to that effect to a panel made up of his or her Client Services Manager, (referred to in this section as the “Manager”), and a Board Medical Advisor (referred to in this section as the “Medical Advisor”).

If, however, after seeking such input from the worker and employer, the Adjudicator concludes that the facts do not warrant recognition of the worker’s condition as an occupational disease, the Adjudicator will disallow the claim without referring it to the panel, and will notify the worker and employer. This is a reviewable decision. The Adjudicator shall provide the Manager with a memorandum advising that the worker’s condition is not one previously designated or recognized by the Board as an occupational disease, the nature of the condition, and the Adjudicator’s decision to disallow the claim.

The Manager, upon receipt of a recommendation from the Adjudicator for recognition of the worker's condition as an occupational disease, and after considering and discussing the claim with the Medical Advisor and after completing any further investigations which he or she considers appropriate, will determine whether the condition reported is one which should be recognized by the Board as an occupational disease for the purposes of that claim. If so, he or she will make an order to that effect which is recorded on the claim. The Manager will keep a record of all such referrals under this section.

If, after considering a referral under this section, the Manager concludes that the reported condition might not be recognized as an occupational disease, the Manager will first advise the worker (or in the case of a deceased worker, their legal representative) and give him or her an opportunity to respond. A decision of the Manager not to recognize the condition as an occupational disease for the purposes of that claim is a reviewable decision.

Where the Manager makes an order to recognize the condition as an occupational disease for the purposes of that claim, the claim is returned to the Adjudicator who will determine all other relevant issues, including whether the worker is entitled to benefits provided for under the *Act*. The making of such an order by the Manager is a reviewable decision.

Where the Manager is not the Client Services Manager, Occupational Disease Services, he or she will ensure that the Client Services Manager, Occupational Disease Services is provided with written notice of any decisions under policy item #26.04.

The designation or recognition of an occupational disease by inclusion in Schedule B, under section 6(4)(b), or by regulation, does not preclude its recognition by order dealing with a specific case if it occurred prior to its designation or recognition by one of the other alternate methods.

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

#26.10 Suffers from an Occupational Disease

Part of the first requirement for compensability is that the worker suffers from, or in the case of a deceased worker the death was caused by, an occupational

disease. Confirming the diagnosis of many occupational diseases may be difficult. This is particularly so for poisoning by some of the metals and compounds listed in Schedule B, the symptoms of which may be similar to the symptoms caused by common complaints that produce fatigue, nausea, headache and the like.

In one Board decision, a worker was advised by the attending physician that he was suffering from lead poisoning and should temporarily withdraw from work. The Board concurred with that advice. Laboratory testing done one month later led to a conclusion that initial tests had been wrong and that the worker never did have lead poisoning. The Board concluded that in these circumstances, where the worker acted reasonably in reliance on medical advice that the Board agreed with, the merits and justice of the claim warranted a conclusion that the worker was suffering from an occupational disease at the time in question even though in retrospect this was proven not to be the case. (2) The cost of compensation paid on a claim of this type is excluded from the employer's experience rating (see #113.10).

#26.20 Establishing Work Causation

The fundamental requirement for a disease to be compensable under Section 6(1) of the *Workers Compensation Act* is that the disease suffered by the worker is "due to the nature of any employment in which the worker was employed whether under one or more employments".

There are two approaches to establishing work causation.

#26.21 Schedule B Presumption

Section 6(3) provides:

"If the worker at or immediately before the date of the disablement was employed in a process or industry mentioned in the second column of Schedule B, and the disease contracted is the disease in the first column of the schedule set opposite to the description of the process, the disease is deemed to have been due to the nature of that employment unless the contrary is proved."

The primary significance of Schedule B is with its use as a means of establishing work causation.

The fundamental purpose of Schedule B is to avoid the repeated effort of producing and analyzing medical and other evidence of work-relatedness for a disease where research has caused the Board to conclude that such disease is specific to a particular process, agent or condition of employment (see #26.01). Once included in Schedule B, it is presumed in individual cases that fit the

disease and process/industry description that the cause was work-related. A claim covered by Schedule B can be accepted even though no specific evidence of work relationship is produced. A review of the available medical and scientific evidence would establish a likely relationship between the disease and the employment. The listing in the Schedule avoids the effort of producing the evidence in every case. Where the research does not clearly relate the disease to particular employments, the disease is not listed in Schedule B and the issue of work-relatedness must be determined on a case-by-case basis (see #26.22).

If at the time a worker becomes disabled by a disease listed in Schedule B, or if immediately before such date, such worker was employed in the process or industry described in the second column of the Schedule opposite to such disease, the worker is entitled to a presumption that the disease was caused by their employment, “unless the contrary is proved”. This presumption applies whether the disease manifests itself while the worker is at work, at home, while away on holidays, or elsewhere. The words “immediately before” used in Section 6(3) are intended to deal with those situations where someone has been employed in the process or industry described in the Schedule, and has left that employment a very short time prior to the onset of the disease.

If a worker becomes disabled by a disease listed in Schedule B but at the relevant time had not been employed in the process or industry described in the Schedule, the claim may still be an acceptable one, however no presumption in favour of work-relatedness would apply. In this event establishing work causation follows the approach covered in #26.22.

Inclusion of the words “unless the contrary is proved” in Section 6(3) means that the presumption is rebuttable. Even though the decision-maker need not consider whether working in the described process or industry is likely to have played a causative role in giving rise to the disease, they must still consider whether there is evidence which rebuts or refutes the presumption of work-relatedness.

The standard of proof to be applied in determining whether the presumption has been rebutted is proof on a balance of probabilities. This is the same basic standard of proof applicable in the workers’ compensation system. If the evidence is more heavily weighted in favour of a conclusion that it was something other than the employment that caused the disease, then the contrary will be considered to have been proved and the presumption is rebutted. The gathering and weighing of evidence generally is covered in #97.00 through #97.60.

Difficulties may arise in determining whether the worker was employed in the process or industry described in the second column. This often arises because of the use of such words as “excessive” or “prolonged”. While the Board would

like to define more precisely the amount and duration of exposure required instead of using these words, it is usually not possible. The exact amounts will often vary according to the particular circumstances of the work place and the worker, or may not be quantified with sufficient precision by the available research. However, while such words are of uncertain meaning, there is valid reason for inserting them. Individual judgment must be exercised in each case to determine their meaning, having regard to the medical and other evidence available as to what is a reasonable amount or duration of exposure.

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

#26.22 Non-Scheduled Recognition and Onus of Proof

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

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

Since workers' compensation in British Columbia operates on an inquiry basis rather than on an adversarial basis, there is no onus on the worker to prove his or her case. All that is needed is for the worker to describe his or her personal

experience of the disease and the reasons why they suspect the disease has an occupational basis. It is then the responsibility of the Board to research the available scientific literature and carry out any other investigations into the origin of the worker's condition which may be necessary. There is nothing to prevent the worker, their representative, or physician from conducting their own research and investigations, and indeed, this may be helpful to the Board. However, the worker will not be prejudiced by his or her own failure or inability to find the evidence to support the claim. Information resulting from research and investigations conducted by the employer may also be helpful to the Board.

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

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

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

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

EFFECTIVE DATE: March 3, 2003 (as to new wording of section 99)
APPLICATION: Not applicable.

#26.30 Disabled from Earning Full Wages at Work

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

of a deceased worker unless his or her death was caused by an occupational disease (also see Section 6(11) of the Act).

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

There is no definition of “disability” in the Act. The phrase “disabled from earning full wages at the work at which the worker was employed” refers to the work at which the worker was regularly employed on the date he or she was disabled by the occupational disease. This means that there must be some loss of earnings from such regular employment as a result of the disabling affects of the disease, and not just an impairment of function. For example, disablement for the purposes of Section 6(1) may result from:

- an absence from work in order to recover from the disabling affects of the disease;
- an inability to work full hours at such regular employment due to the disabling affects of the disease;
- an absence from work due to a decision of the employer to exclude the worker in order to prevent the infection of others by the disease;
- the need to change jobs due to the disabling affects of the employment.

A worker who must take time off from his or her usual employment to attend medical appointments is not considered disabled by virtue of that fact alone. However, income loss payments may be made to such a worker (see #83.13).

A change of employment or lay-off from work for the purpose of precluding the onset of a disability does not amount to a disability for this purpose. For time limits with respect to occupational disease claims see #32.55.

APPENDIX 1

INDEX OF RETIRED DECISIONS FROM VOLUMES 1 – 6 (DECISIONS NO. 1 – 423) OF THE *WORKERS' COMPENSATION REPORTER*

EXPLANATORY NOTE:

The Board of Directors Bylaw re: Policies of the Board of Directors lists the policy manuals and other documents that are policies for purposes of the *Workers Compensation Act*. Included in the list are Decisions No. 1 – 423 in volumes 1 – 6 of the *Workers' Compensation Reporter*. These Decisions consist, for the most part, of decisions made by the former commissioners on various matters between 1973 and 1991.

In order to reduce the number of sources of policies, a strategy has been approved for consolidating Decisions No. 1 – 423 into the various policy manuals, as appropriate, and “retiring” the Decisions over time.

“Retire” for this purpose means that, as of the “retirement date”, the Decision is no longer current policy under the Board of Directors Bylaw.

“Retiring” does not affect a Decision’s status as policy prior to the date it was “retired”. A “retired” Decision therefore applies in decision-making on historical issues to the extent it was applicable prior to the “retirement date”. “Retiring” also does not affect the disposition of any individual matters dealt with in a Decision.

This Index sets out the Decisions from volumes 1 - 6 that have been “retired” and the “retirement date”. It will be updated as further Decisions are “retired” in the future.¹

Please note that as of June 1, 2004, only four Decisions from Volumes 1 – 6 of the *Workers' Compensation Reporter* remain to be retired: Nos. 99, 225, 231 and 271. These Decisions will be addressed in the near future.

¹ Decisions that do not appear in the Index should not necessarily be considered current policy. Decisions or parts of Decisions may have been replaced, either expressly or impliedly, by subsequent policies in the policy manuals or other policy documents. Under the Board of Directors Bylaw, where there is a conflict between policy in Decisions No. 1 - 423 and policy in a policy manual listed in the Bylaw, the policy in the manual is paramount. In the event of any other conflict between policies, the most recently approved policy is paramount.

DECISION NO.	TITLE	RETIREMENT DATE
312	Transportation Costs for Physiotherapy and the Reimbursement of Expenses	June 17, 2003
313	Overpayments	June 17, 2003
314	The Consumer Price Index	May 1, 2000
315	Adjustments According to the Consumer Price Index	May 1, 2000
316	Herniae	October 21, 2003
317	Industrial Hygiene and Cominco Ltd.	June 17, 2003
318	Stress Testing	February 24, 2004
319	Clothing Allowances	May 1, 2000
320	Continuity of Income and Assessment for Permanent Disability	February 24, 2004
321	<i>Workers Compensation Act</i>	May 1, 2000
322	The Consumer Price Index	May 1, 2000
323	Adjustments According to the Consumer Price Index	May 1, 2000
324	Personal Care Allowances	February 24, 2004
325	The Review of Old Disability Pensions	June 17, 2003
326	Industrial Diseases	October 21, 2003
327	The Maximum Wage Rate	May 1, 2000
328	The Reimbursement of Expenses	May 1, 2000
329	Industrial Health and Safety Regulations	June 17, 2003
330	Scope of Employment	February 24, 2004
331	The Consumer Price Index	May 1, 2000
332	Adjustments According to the Consumer Price Index	May 1, 2000
333	Certain Industrial Diseases	February 24, 2004

DECISION NO.	TITLE	RETIREMENT DATE
334	Boards of Review	June 17, 2003
335	Principals of Limited Companies	January 1, 2003
336	The Consumer Price Index	May 1, 2000
337	Adjustments According to the Consumer Price Index	May 1, 2000
338	Disclosure of Claim Files	May 1, 2000
339	The Maximum Wage Rate	May 1, 2000
340	The Reimbursement of Expenses	May 1, 2000
341	Industrial Hygiene and Cominco Ltd.	June 17, 2003
342	Assessment of Employers	May 1, 2000
343	Scope of Employment	June 1, 2004
344	The Consumer Price Index	May 1, 2000
345	Adjustments According to the Consumer Price Index	May 1, 2000
346	Payment of Interest	May 1, 2000
347	Oral Hearings on Appeals to the Commissioners	May 1, 2000
348	Alcoholism	February 24, 2004
349	Industrial Health and Safety Regulations	October 21, 2003
350	Commissioners' Decisions	May 1, 2000
351	Assessment of Employers	January 1, 2003
352	The Consumer Price Index	May 1, 2000
353	Adjustments According to the Consumer Price Index	May 1, 2000
354	Industrial Hygiene and Cominco Ltd.	June 17, 2003
355	Industrial Health and Safety Inspections	October 21, 2003