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WORKING TO MAKE A DIFFERENCE

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Update 2009 – 1

**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 2008 – 2.

These housekeeping amendments reflect the policy changes made on February 1, 2004 to apply the Volume II Status of Treatment Injuries policies to Volume I claims, and is meant to ensure that no confusion will be created for Volume I claims as the Volume II policies are revised in the future.

The amended policies include:

- Policy item #22.00, *Compensable Consequences of Work Injuries*
- Policy item #22.10, *Further Injury or Increased Disablement Resulting from Treatment*
- Policy item #22.11, *Disablement Caused by Unauthorized Surgery*
- Policy item #22.15, *Travelling To and From Treatment*
- Policy item #22.21, *Activities on Board Premises or at Other Premises under Board Sponsorship*

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 WorkSafeBC Customer Service at the following:

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Roberta Ellis
Vice President
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Attachments

Rehabilitation Services & Claims Manual, Volume I

SUMMARY OF AMENDMENTS – Update 2009 – 1

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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 reopened 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)