

WORK SAFE. FOR LIFE.
WORKERS' COMPENSATION BOARD OF NOVA SCOTIA

**Program Policy
Issues Clarification Paper:**

Noise Induced Hearing Loss

September 12, 2013

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1. PURPOSE

Without clear and consistent principles for the adjudication of Noise Induced Hearing Loss (NIHL) claims at the WCB and through the appeal process, the adjudication of these claims has been complex and difficult, with a significant number proceeding to appeal.

This paper is intended to provide a Stakeholder Working Group, assembled for a Stage 1 review of the WCB's Noise Induced Hearing Loss Policy, with an understanding of the current environment related to occupational noise induced hearing loss and some other background information relevant to this topic. We are asking members of the Working Group to help clarify areas of concern and issues regarding the current policy to ensure the WCB considers all issues as the Noise Induced Hearing Loss Policy is revised.

Considering the input from the Working Group, the WCB will develop a draft Noise Induced Hearing Loss Program Policy and background paper that will be distributed to key stakeholders and posted to the WCB's website as Stage 2 of the consultation process.

Through this policy review, the WCB intends to establish clear and consistent principles, founded in best practice medical research, to assist the system and stakeholders to have clear understanding and expectations of the adjudication process.

It should be noted that while the cost of NIHL in the system continues to rise, the policy changes are not anticipated to have significant financial impact.

2. BACKGROUND

What is the issue?

The WCB's Noise Induced Hearing Loss Policy was originally approved in September 1999 and updated in March 2000. Since that time, the WCB and system partners have struggled with a lack of clarity and consistent principles in implementing this policy. Plus, the current policy does not consider the growing expertise (for example the American College of Occupational and Environmental Medicine (ACOEM)) in this area.

Over the years, multiple issues have been identified with the policy both internally and by the Workers' Compensation Appeals Tribunal (WCAT). Interpretation of the current policy creates a significant burden on the appeal system and introduces complexity with the adjudication of claims. Issues include:

- Consistency with the *Act*;
- Apportionment of impairment and benefits is complicated and unclear, including what the requisite degree of contribution should be (e.g. the "but for" test);

- The definition of “pattern consistent with NIHL” is not currently aligned with a scientific expert, such as ACOEM; and,
- Section 83 (reporting timeline).

In 2009 the Issues Resolution Working Group (IRWG), comprised of representatives of WCAT, the Workers’ Advisers Program (WAP) and WCB, attempted to improve the clarity and consistency of adjudication of noise induced hearing loss claims. After much discussion, the group recommended the WCB proceed with policy development, as many issues with NIHL were complex and required clarification via policy. Additionally, NIHL was identified during the Policy Agenda setting process by stakeholders.

Context

The WCB has experienced complexity in hearing loss claims for a variety of reasons:

- Hearing loss occurs over a period of time;
- Factors such as aging and other non-compensable factors can contribute to hearing loss making it difficult to accurately determine what portion is due to occupational noise; and
- Medical/scientific positions diverge on key diagnostic and adjudicative questions.

NIHL is currently classified as an occupational disease. Compensation for occupational diseases, according to Sec 12(1) of the *Workers’ Compensation Act*, requires that a worker suffer either death, loss of earnings, or a Permanent Medical Impairment (PMI) in order to be entitled to compensation. However, per the WCB’s NIHL policy (1.2.5AR), workers are currently entitled to Medical Aid in the form of hearing aids without meeting the occupational disease requirement of having a PMI. Therefore, opening the policy for revisions to address the adjudicative issues identified above requires the WCB to also address the legal inconsistency in the existing policy of providing Medical Aid (in the form of Hearing Aids) without a PMI.

While the current NIHL policy is in keeping with the approach used in many other Canadian jurisdictions, there are a few significant considerations:

- Nova Scotia is in the minority of jurisdictions who classify NIHL as an occupational disease;
- Providing medical aid to injured workers who do not meet the entitlement criteria for PMI is inconsistent with our occupational disease policy and the *Act*; and
- Appeal proceedings have raised a number of issues that could be addressed conclusively through policy change.

What is Noise-Induced Hearing Loss (NIHL)?

The American College of Occupational and Environmental Medicine (ACOEM) defines occupational NIHL as:

Occupational noise-induced hearing loss, as opposed to occupational acoustic trauma, is hearing loss that is a function of continuous or intermittent noise exposure and duration, and which usually develops slowly over several years. This is in contrast to occupational acoustic trauma,

*which is characterized by a sudden change in hearing as a result of a single exposure to a sudden burst of sound, such as an explosive blast.*¹

Since noise is a common condition in a variety of industrial sectors, NIHL is a very prevalent occupational condition in Nova Scotia. However, numerous non-occupational factors may contribute to a person's hearing loss including: congenital conditions; conductive factors; noise exposure unrelated to employment; medication and presbycusis (age-related hearing loss). As a result, professional measurement and clinical diagnosis are critical factors in diagnosing occupational NIHL.

The ACOEM principles influence practice and medical decisions; however, the language of the WCB's current NIHL policy does not align with, or reference, ACOEM's principles.

3. SCOPE OF IMPACT

- Hearing loss claims represent approximately 2.3% of total claim volume annually. On average, there are 665 new applications for hearing loss claims per year.
- In 2009, Internal Appeals (IA) received 132 NIHL appeals, (7.6% of total appeals to Internal Appeals); 116 in 2010, (7.1% of total appeals to Internal Appeals); 99 in 2011, (5.7% of total appeals to Internal Appeals); and 110 in 2012, (6.4% of total appeals to Internal Appeals). There were 1724 total appeals to Internal Appeals in 2012. The number of hearing loss claims at WCB has been relatively stable save for a peak of 51 in 2007. Otherwise, an average of 31 hearing loss claims yearly are referred to WCB.
- The total cost of claims paid by the WCB in 2012 exceeded \$242M. While short term trends show significant variability, the cost of established hearing loss claims exceeded \$4.8M in 2012. Moving forward, this annual cost will grow as new claims are added to the population.
- The total cost for new claims for all injury types in 2012 was \$29.0M. Newly established hearing loss claims, cost roughly \$1M in 2012. Approximately half of hearing loss costs are attributable to Permanent Impairment Benefits; the other half are medical aid costs including hearing aids and batteries.

4. ISSUES

a) NIHL policy is inconsistent with the *Workers' Compensation Act*

There is a fundamental inconsistency in the NIHL policy between entitlement to medical aid, and entitlement to occupational disease². NIHL has been classified as an industrial disease, now called occupational disease, in policy as early as 1982. It must therefore be adjudicated according to Section 12(1) of the *Workers' Compensation Act*, which requires either a loss of earnings, PMI, or death before a

¹ American College of Occupational and Environmental Medicine 2012 NIHL Position Statement

² Three other jurisdictions (BC, NL, and the NWT) classify NIHL as an occupational disease. All three jurisdictions require that the disease causes a loss of earnings or death, and is related to the worker's employment. However, BC has an additional section that is specific to hearing loss that allows compensation to be calculated when there is loss of hearing, but no loss of earnings.

worker is entitled to compensation. In the case of NIHL, satisfying s. 12(1) is generally by way of PMI (as most workers' earnings ability is not impacted by hearing loss).

- In accordance with current NIHL policy, a worker is entitled to medical aid where the decibel sum of the hearing threshold levels of the audiogram (500, 1000, 2000, and 3000Hz) for the ear is 100dBs or greater. However, per the AMA Guidelines^{4th} Edition, which the WCB follows in adjudicating this type of claim, a worker is not entitled to a PMI until they have a loss of hearing of at least 105dBs bilaterally.
- In practice, workers with a hearing loss of between 100dBs and 105dBs receive medical aid in the form of a hearing aid, even though they do not meet the criteria for a PMI, loss of earnings, or death due to the discrepancy between the Act and Policy.

In 2010, 44 workers were awarded Medical Aid benefits as a result of showing 100dB of loss in one or both ears, but fell short of PMI levels (105 dB bilaterally). This group comprised about 16% of the approved hearing loss population for that year.

Changing the entitlement criteria such that a PMI is required in order to qualify for medical aid (i.e. hearing aids) would ensure that the policy is consistent with the Act, which is clearly desirable from an adjudicative practice (and arguably public confidence) standpoint. However, it would be more restrictive than current practice seeing fewer workers qualify for benefits going forward.

Three other jurisdictions (BC, NL, and the NWT) classify NIHL as an occupational disease.

The British Columbia *Workers' Compensation Act* requires an occupational disease to be compensated when a worker is disabled from earning full wages at which the worker was employed, or the death of a worker is caused by an occupational disease; and the disease is due to the nature of any employment in which the worker was employed, whether under one or more employments. The legislation specifies that a health care benefit may be paid although the worker is not disabled from earning full wages at the work at which he or she was employed. BC's Act has an additional section entitled Loss of Hearing, that specifies NIHL be paid in accordance to their percentage of impairment tables set out in the Act. Additionally, BC specifies that compensation should be calculated when there is loss of hearing but no loss of earnings, as per the aforementioned table.

The *Newfoundland Workers' Compensation Act* provides compensation where a worker suffers from an industrial disease and is as a result disabled or his or her death is caused by an industrial disease; and the disease is due to the nature of the employment in which he or she is engaged, whether under one or more employments. Disability in their Act is defined as the "loss of earning capacity of a worker as a result of an injury".

In Northwest Territories, a disease is presumed to have arisen out of a worker's employment and to have occurred during the course of that employment if:

- (a) the worker is disabled by the disease;
- (b) the worker has been exposed to conditions during the employment that might reasonably have caused the disease; and
- (c) the exposure to the conditions in paragraph (b) occurred at any time during the 12 months preceding the disability.

For the purposes of their *Act*, "disability" means the condition of having reduced physical or mental abilities caused by the worker's personal injury or disease.

All three jurisdictions who classify NIHL as an occupational disease require that the disease causes a loss of earnings or death, and is related to the worker's employment. However, BC has an additional section that is specific to hearing loss that allows compensation to be calculated when there is loss of hearing, but no loss of earnings.

While recommendations have been explored for policy development to address the adjudicative difficulties with NIHL claims, opening the policy for revisions will require the Board of Directors to address the basic inconsistency between entitlement to an occupational disease, and entitlement to medical aid.

To address the basic inconsistency between the entitlement to an occupational disease, and entitlement to medical aid, the WCB sees two possible options for moving forward:

1. Change entitlement to medical aid to be in line with definition of an occupational disease (recognizing a PMI, loss of earning, or death):
 - The intent of the original policy was to provide medical aid to workers with a PMI, the separate allowance for medical aid was likely an oversight.
 - Changing entitlement to 105dB is in line with the AMA Guidelines, which seems to have been the original intent of the current NIHL policy.
 - This change would ensure the policy is consistent with the *Act*, and other policies (e.g. Occupational Disease, PMI Rating Schedule).
 - Changing entitlement to medical aid for NIHL claims would exclude approximately 40-45 applicants per year. In 2010 this population represented 16% of NIHL claims.
2. Cease classifying NIHL as an occupational disease.
 - NIHL was classified as an industrial disease, now called occupational disease, in policy as early as 1982, and there is no evidence to suggest that it has been classified differently at any point in time.
 - It would be difficult to justify, given the historical context and the fact that NIHL meets the general requirements of an occupational disease.
 - NIHL has some of the traits and challenges of occupational disease in that they are injuries that occur over time and potentially through multiple employers. Because of this, it is difficult to assign the cost of a claim to one employer³.

b) Difficulties with applying current WCB apportionment policy

The WCB is not intending to revise the Apportionment Policy (Policy 3.9.11R1) at this time. It is discussed here as apportionment is a significant issue as it relates to NIHL. It is not specifically addressed in the NIHL policy, because hearing loss is apportioned in the same manner as any other injury/ disease

³ Occupational disease claims do not impact individual employer rates as they are excluded from experience rating.

– by following Policy 3.9.11R1 that directs case workers to the AMA Guides, which outline how to apportion non-medical factors.

This is complicated by the “but for” test for causation, which is central in determining causation. The “but for” test means that “but for” the original compensable injury, the hearing loss would not have occurred. In determining causation, it must be established that it is as likely as not that “but for” the compensable injury, the worker would not be experiencing the current level of hearing loss. This can be difficult when a worker does not develop significant hearing loss until they start to experience presbycusis, which may not have caused impairment without the original workplace NIHL.

In Nova Scotia, occupational diseases must follow Policy 3.9.11R1, as has been upheld by WCAT, and there would have to be a compelling reason that draws a clear distinction/ rationale as to why NIHL is different than all other occupational disease. Current NIHL policy does not provide any specified thresholds or tools to isolate contributing factors of hearing loss. This makes it very difficult to apply the apportionment policy in the spirit that it was intended. The current NIHL policy was not written with apportionment in mind, and experience demonstrates that there are complexities in applying the apportionment policy to noise induced hearing loss claims.

Policy 3.9.11R1 instructs the WCB to determine the portion of the permanent impairment that is compensable by doing one of the following:

- (a) Determine the total permanent impairment rating using the applicable permanent impairment rating schedule in accordance with [Policy 3.3.2R2](#) (Permanent Impairment Rating Schedule).
- (b) Assign the impairment that results from the non-compensable factor(s) a permanent impairment rating and subtract this from the total permanent impairment rating to determine the portion of permanent impairment that is compensable.

In a number of recent decisions, WCAT has taken the following approach to apportioning the PMI rating in hearing loss situations, basing their decision on section 4.3.1 of Policy 3.9.11R1:

First, one must calculate the total or global PMI rating, which includes the impairment caused by both compensable and non-compensable factors – for example, a global PMI rating of seven percent. Second, one must calculate the PMI rating due to non-compensable causes – for example, a non-compensable component of two percent. Third, one must subtract the PMI rating which would arise due to non-compensable reasons from the total or global PMI rating. In this example, seven minus two would give rise to a PMI rating of five percent based on apportionment principle.

Unfortunately, when applying the apportionment policy in practice the results remain the same as before apportionment. For example; a PMI rating for hearing loss occurs at a minimum of 105dB which equates to a 1% PMI. In either of the following cases, when applying the apportionment policy the results are unchanged, leaving case workers with no tools to quantify the non-compensable component.

- 1) The non compensable factors alone total less than 105dB (a near certainty)
- 2) The non compensable factors cannot be reasonably estimated (very likely)

Perhaps the most significant issue facing adjudicators is the timing of apportionment. In other words, whether non compensable factors/ causes should be considered and accounted for before or after entitlement is determined. The issue arises when the combined compensable and non-compensable factors contributing to the global hearing loss exceed the minimum threshold for PMI but the compensable share alone is insufficient to meet the threshold for NIHL PMI. This leaves adjudicators in a difficult position of addressing the question of how the apportionment policy should be applied in NIHL cases, in terms of whether non compensable hearing loss should be apportioned prior to or after the conditions of entitlement are met.

Another adjudicative difficulty is often encountered when one ear is significantly worse than the other, and this difference is attributed to non compensable factors. Currently, WCAT suggests that this should be apportioned as per the apportionment policy. However, unless the worker's exposure is significantly unique (featuring a fixed noise source relative to the head), science suggests that the better ear is more representative of workplace NIHL. If that is assumed, then the level of loss in the better ear should be used to determine a PMI.

While there appears to be consensus at WCAT that Policy 3.9.11R1 rules apply to NIHL, there does not appear to be a consistent approach in how apportionment principles are applied in the hearing loss PMI context.

Eight jurisdictions responded to a request for information around their use of tools for calculating impairment due to loss of hearing:

- Manitoba and Alberta use the International Organization for Standardization (ISO) tables;
- British Columbia uses a combination of the Robinson Tables and their own Industrial Audiogram Program;
- New Brunswick does not apportion, rather they accept responsibility for the entire injury once it meets entitlement criteria;
- Saskatchewan does not use the ISO or Robinson Tables, but rely on ACOEM for entitlement;
- Northwest Territories, Newfoundland and Labrador, and PEI do not use ISO or equivalent, rather they adjudicate in a manner similar to what Nova Scotia does currently.

Worksafe BC has developed a logical, scientific approach to estimating the proportions of compensable and non-compensable hearing loss in cases where multiple factors have influenced a worker's NIHL, and actual noise readings from the workplace(s) are not available. Using a noise exposure database, an informed estimate of client's level and duration of noise exposure is established. This is mapped onto tables established by the International Standards Association based on massive noise-exposure studies to project how individuals at different levels of noise damage susceptibility would be affected. Worksafe's BC's approach is to liberally assume that every worker is in the top 10% of susceptibility, applying benefit of the doubt in the worker's favour in each case.

"Robinson's Tables" are used in BC when there is some positive evidence of non-occupational causes or components in the worker's loss of hearing (for example, some underlying disease). These tables were statistically formulated to calculate the expected hearing loss following a given exposure to noise. In applying these tables, the cumulative period of noise exposure is calculated. A factor for aging is then added. For permanent disability award purposes, the resulting calculation is then compared on "Robinson's Tables" to the worst 10% of the population (i.e., at the same levels and extent of noise exposure, 90% of individuals will have better hearing than the worker).

This provides a scientifically supported methodology for arriving at noise damage estimates, and significantly removes subjectivity from the apportionment process.

- c) The definition of “pattern consistent with NIHL” is not currently aligned with a scientific expert, such as ACOEM

Many appeals on NIHL claims are initiated on challenges to the WCB’s interpretation of “a pattern consistent with an occupational NIHL” , a criteria of Policy 1.2.5AR. To avoid subjective interpretation of this clause, there is value in exploring the formal adoption of the ACOEM guidance statement on Noise Induced Hearing Loss. This 2012 publication is the third iteration of an evidence-based expert consensus statement, based on the experience and professional opinions of world-renowned Occupational Noise Induced Hearing Loss Experts to provide diagnostic guidance to practicing physicians.

ACOEM provides a set of characteristics which could be referenced as an adjudicative algorithm for the sake of equity, fairness, consistency of practice, simplicity and efficiency. WCB has consulted authors of the ACOEM statement to review and critique this application of their work, and received solid endorsement in that regard.

- d) Reporting Timelines

One of the significant challenges for the adjudication of NIHL is that workers often do not file a claim until they have been out of the workforce for many years. At this point, it is difficult to separate occupational hearing loss from other factors such as recreational noise exposure, age and medications.

In Newfoundland and Labrador, entitlement to NIHL is based on:

- a. An audiological assessment performed by an audiologist, using the standard reporting requirements established by the Commission, and the requirements outlined in 2(a) or (b) have been met; or
- b. For those workers who are no longer exposed to hazardous noise levels in the workplace because they have either changed workplace locations or have left their employment, the Commission will consider an audiogram performed at the time of termination of exposure to hazardous noise levels or an audiological assessment performed within five (5) years of the last exposure to hazardous noise.

This is the only Canadian jurisdiction that currently sets out timelines for audiograms for workers who are no longer exposed to hazardous workplace noise.

Under section 83 of the Act, if the injury is an occupational disease, the worker must:

- give notice of the injury to the employer as soon as practicable after the worker learns that he or she suffers from an occupational disease; and
- make a claim for compensation within 12 months of the worker learning of the occupational disease for which compensation is claimed.

The WCB may extend the time for filing a claim, but not beyond five years from the date of the accident or from when the worker learned of the occupational disease.

Determining the meaning of when the injured worker learns that they have an occupational disease is a central issue to both the date of injury and the timeline for filing a claim.

The phrase “when the worker learns” can be interpreted in different ways; it is possible that interpretations can result in workers being able to file claims significantly after the worker has left their employment. Current practice within the WCB is to use the date of medical evidence as the date of accident. WCAT seems to be in agreement on this, however there are still challenges and inconsistencies surrounding when the audiogram was performed.

Summary

As noted above, the issues surrounding Noise Induced Hearing Loss (NIHL) claims are complex and varied. Through exploration of the issues raised in this paper and/or further identified by stakeholder, the WCB intends to revise the current Noise induced Hearing Loss Policy to develop clear and consistent principles for the adjudication of these claims at the WCB and through the appeal process.

6. PROVIDING YOUR COMMENTS

We would like to invite you to participate in a Stakeholder Working Group which will explore the issues surrounding Noise Induced Hearing Loss claims. **In particular, we encourage you to consider whether there are any additional issues you would like to see addressed as the WCB considers revising the Noise Induced Hearing Loss Policy.**

To confirm your participation in the Working Group or if you have any questions prior to the Working Group meeting (date and location to be determined) please contact:

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APPENDIX A – Existing NIHL Policy

Policy 1.2.5AR - Occupational Hearing Loss - Injuries on or after January 1, 2000

Effective Date: March 23, 2000

Topic: Occupational Hearing Loss – Injuries on or after January 1, 2000.

Date Issued: March 23, 2000

Section: Entitlement

Date Approved by Board of Directors: March 16, 2000

Subsection: Occupational Disease

DEFINITIONS

Noise-Induced Hearing loss

Noise-induced hearing loss means the gradual deterioration of hearing as a result of exposure to hazardous noise over a period of time.

Traumatic Hearing Loss

Traumatic hearing loss means hearing loss caused by trauma (i.e. a loud, sudden explosion, or a blow to the head).

Tinnitus

Tinnitus means a ringing, rushing, buzzing or roaring sound experienced in one or both ears.

Presbycusis

Presbycusis means a loss of hearing as a result of aging.

POLICY STATEMENT

1. Noise-induced hearing loss is recognized as an occupational disease and must arise from an industrial process, trade or occupation wherein the noise exposure and hazard is characteristic of or peculiar thereto.
2. Acceptable noise exposure levels shall be determined in accordance with Policy 1.2.6R. Where actual noise levels are unavailable an "estimate" is to be made of the actual level of noise the worker would have been exposed to based on the information obtained from similar industries or types of work.
3. The extent of a worker's hearing loss shall be assessed, evaluated, and rated on the basis of an audiogram, as specifically plotted. Hearing loss levels shall be tested at the four measured frequency levels of 500, 1000, 2000 and 3000 Hz.

4. For acceptance of a noise-induced hearing loss claim the audiogram must have a pattern consistent with noise-induced hearing loss.
5. A presbycusis factor of 2 decibels shall be deducted from the decibel sum of the hearing threshold levels of the audiogram (500, 1000, 2000 and 3000 Hz) for each year the worker's age exceeds 60.
6. Medical Aid in the form of a hearing aid shall be provided to a worker for hearing loss in an ear where the decibel sum of the hearing threshold levels of the audiogram (500, 1000, 2000 and 3000 Hz) for the ear is 100 decibels or greater.
7. The existence and degree of a worker's permanent medical impairment rating for noise induced and traumatic hearing loss will be determined using the American Medical Associations "Guides to the Evaluation of Permanent Impairment – Fourth Edition" (the "AMA Guides").

Tinnitus

8. To establish entitlement to a permanent impairment rating for tinnitus caused by noise-induced hearing loss the following circumstances must apply:
 - 8.1. There is an acceptable claim for occupational noise-induced hearing loss, which means the decibel sum of the hearing threshold levels of the audiogram (500, 1000, 2000 and 3000 Hz) is 100 decibels or greater; and
 - 8.2. There is a clear and adequate history of two or more years of continuous tinnitus.
9. Claims for tinnitus caused by occupational factors other than noise-induced hearing loss will be judged on their individual merits.
10. To determine an impairment rating for tinnitus the Board shall use the American Medical Associations "Guides to the Evaluation of Permanent Impairment – Fourth Edition" (the "AMA Guides").

APPLICATION

This Policy applies to injuries arising on or after January 1, 2000.

This Policy replaces Policy 1.2.5A, approved by the Board on September 3, 1999.

REFERENCES

[Workers' Compensation Act](#) (Chapter 10, Acts of 1994-95), (as amended), Sections 2(v), 10, 12, 102.
[Policy 1.2.6R](#).

APPENDIX B – Existing Apportionment Policy

Policy 3.9.11R1 - Apportionment of Benefits

Effective Date:	April 10, 2008	Topic:	Apportionment of Benefits
Date Issued:	April 22, 2008	Section:	Short-Term and Long-Term Benefits
Date Approved by Board of Directors:	April 10, 2008	Subsection:	General

PREAMBLE

Where a personal injury by accident arising out of and in the course of employment results in loss of earnings or permanent impairment due (a) in part to the injury and in part to causes other than the injury; or (b) to an aggravation, acceleration, or activation of a disease or disability existing prior to the injury, the WCB is directed by Section 10(5) of the *Workers' Compensation Act* ("the Act") to pay compensation for the proportion of the loss of earnings or permanent impairment that may reasonably be attributed to the injury.

The WCB has adopted the following Policy with respect to the effect of Section 10(5) on the amounts of compensation benefits payable.

DEFINITIONS

For the purpose of the Policy, the following definitions shall apply:

"aggravation", "acceleration", or "activation" means the clinical effect of a compensable injury on a pre-existing disease or disability resulting in a permanent increase in the impairment and/or loss of earnings capacity resulting from the pre-existing disease or disability;

"cause other than injury" means any aspect of the physical condition of an individual worker which, due to its nature or severity, could be reasonably expected to have a significant impact on the duration and/or the degree of a worker's loss of earnings or permanent impairment resulting from a compensable injury

"compensable injury" means a personal injury by accident arising out of and in the course of employment;

"degenerative" means characterized by progressive, often irreversible, deterioration;

"disability" means the decreased capacity or loss of ability of an individual to meet personal, social or occupational demands;

"disease" means the specific pathophysiologic process involved, which gives rise to the worker's signs

and symptoms and their progression;

“exacerbation” means the clinical effect of a compensable injury on a pre-existing disease or disability resulting in a temporary increase in the impairment and/or loss of earnings capacity resulting from the pre-existing disease or disability;

“impairment” means the loss of, loss of use of, or derangement of any body part, system or function;

“non-compensable factor” means any condition unrelated to a compensable injury which may affect recovery and/or the extent of impairment/loss of earnings. A non-compensable factor may exist prior to a compensable injury or it may develop post-injury. This includes causes other than the injury and pre-existing diseases or disabilities;

“permanent impairment” means impairment associated with a permanent medical impairment and/or a pain-related impairment;

“permanent medical impairment” means any impairment that has become static or stabilized and that is unlikely to improve despite further medical treatment. A permanent medical impairment also accounts for the usual pain that accompanies the type of injury and resulting impairment;

“pain-related impairment” means impairment associated with chronic pain.

“pre-existing disease or disability” means a non-compensable disease or disability which existed prior to the compensable injury.

POLICY STATEMENT

1. Temporary Earnings Replacement Benefit (TERB)

1.1 Where:

- (a) the compensable injury causes an exacerbation or aggravation, acceleration or activation of a pre-existing disease or disability; or
- (b) the loss of earnings is due in part to the compensable injury and in part to a non-compensable factor which developed post-injury,

the WCB will assume full responsibility for TERB without apportionment as long as there are medical findings to substantiate that the compensable injury is contributing to some degree to the loss of earnings, even if a non-compensable factor(s) is prolonging recovery and/or loss of earnings.

- 1.2 Where a worker is unable to commence or continue medical treatment for a compensable injury due to a non-compensable factor, the WCB will apply [Policy 1.3.2R](#) (Interruption of Medical Treatment – Circumstances Beyond Worker’s Control).

2. Medical Aid

- 2.1 Medical aid required as a result of the compensable injury will not be subject to apportionment.

3. Vocational Rehabilitation

- 3.1 Where the WCB determines that no proportion of a worker's permanent impairment can be attributed to a compensable injury, vocational rehabilitation services will not be offered to the worker.

- 3.2 Where:

- (a) the compensable injury causes an aggravation, acceleration or activation of a pre-existing disease or disability; or
- (b) the anticipated permanent impairment is due in part to the compensable injury and in part to a non-compensable factor(s) which developed post-injury,

and medical evidence indicates that a proportion of the anticipated long-term loss of earnings can be attributed to the compensable injury, vocational rehabilitation services will be provided to the worker in accordance with normal guidelines, without apportionment.

4. Permanent Impairment

- 4.1 Where a non-compensable factor(s) is contributing to the worker's permanent impairment, the permanent impairment may be adjusted to reflect the impact of this non-compensable factor(s). Permanent impairment benefits will only be paid for the permanent impairment resulting from the compensable injury.

- 4.2 To determine the impact of the non-compensable factor(s) on the permanent impairment:

- (a) the WCB will gather evidence which can include, but is not limited to:

- Physician chart notes;
- Specialist reports;
- Diagnostic test results (i.e. x-ray, CT scan, MRI);
- Physiotherapy, chiropractor and occupational therapy reports;
- Accident Report;
- Information from disability insurance providers and/or the employer;

Employment-related information.

- (b) if the non-compensable factor(s) is degenerative in nature, the WCB will gather medical evidence with respect to how the condition would have progressed (up to the point of assessing permanent impairment) in the absence of the compensable injury.

4.3 Where:

- (a) the compensable injury causes an aggravation, acceleration or activation of a pre-existing disease or disability; or
- (b) the permanent impairment is due in part to the compensable injury and in part to a non-compensable factor(s) which developed post-injury

the WCB will determine the portion of the permanent impairment that is compensable in the following ways:

4.3.1

- (a) Determine the total permanent impairment rating using the applicable permanent impairment rating schedule in accordance with [Policy 3.3.2R2](#) (Permanent Impairment Rating Schedule).
- (b) Assign the impairment that results from the non-compensable factor(s) a permanent impairment rating and subtract this from the total permanent impairment rating to determine the portion of permanent impairment that is compensable.

4.3.2

- (a) If it is not possible to apply Policy Statement 4.3.1(b), determine the degree of permanent impairment that results from the non-compensable factor(s) by applying the following definitions:

“Minor” refers to an impairment which produced no or minimal limitations on working capacity but required occasional medical care.

“Moderate” refers to an impairment which produced some limitations on working capacity and required periodic medical care.

“Major” refers to an impairment which produced significant limitations on working capacity requiring ongoing medical care.

“Severe” refers to an impairment which produced significant limitations on working capacity, requiring ongoing medical care and would certainly have resulted in total disability independent of the compensable injury.

- (b) Determine the portion of permanent impairment that is compensable by multiplying the total permanent impairment rating by the percentage from the table below which corresponds to the applicable definition:

Classification of Non-Compensable Factor(s)	Compensable Percentage of Permanent Impairment
Minor	100% (no apportionment)
Moderate	75%
Major	50%
Severe	25%

5. Extended Earnings Replacement Benefit (EERB)

- 5.1 Where the worker is experiencing an on-going loss of earnings as a result of the permanent impairment remaining after the compensable injury, the WCB will determine what proportion of the loss of earnings can be attributed to the compensable injury and what proportion can be attributed to a non-compensable factor(s). EERBs will only be paid for the on-going loss of earnings resulting from the compensable injury.
- 5.2 Where the WCB determines that a non-compensable factor was only a latent weakness or susceptibility and there is no evidence: (a) that it had any impact on the worker's pre-injury earning capacity; or (b) that it would have progressed to produce loss of earning capacity without the occurrence of the compensable injury, it will be considered that the entire extended loss of earnings can be attributed to the compensable injury and EERBs will be paid without apportionment under Section 10(5) of the Act.
- 5.3 The WCB will determine the portion of the extended loss of earnings that is compensable in the following way:
- 5.3.1 Determine the total extended loss of earnings in accordance with normal guidelines.
- 5.3.2 Determine the portion of extended loss of earnings that is compensable by multiplying the total extended loss of earnings by the percentage from the table below which corresponds to the applicable definitions for the non-compensable factor:

Classification of Non-Compensable Factor(s)	Percentage of Extended Loss of Earnings Payable
Minor *	100% (no apportionment)
Moderate *	75%
Major *	50%
Severe *	25%

* As determined in accordance with Section 4.3.2 of this Policy

6. Death/Survivors' Benefits

- 6.1 If the WCB determines that a compensable injury was a factor contributing to a worker's death,

death and survivors' benefits are payable in the full amounts provided for in the Act, without apportionment, since such benefits are not paid as compensation for loss of earnings or permanent impairment.

APPLICATION

This policy replaces Policy 3.9.11R issued on September 13, 2004 and effective September 10, 2004. This Policy applies to all decisions made on or after April 10, 2008.

REFERENCES

[Workers' Compensation Act](#) (Chapter 10, Acts of 1994-95), Section 10(5)