

**Program Policy Background Paper:
Noise Induced Hearing Loss**

January, 2018

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1. PURPOSE

The Workers' Compensation Board's (WCB) Noise Induced Hearing Loss (NIHL) Policy was approved in September 1999 and updated in March 2000. The WCB and system partners struggled for years with lack of clarity and consistent principles in implementing the policy, and it weighed heavily on the appeal system.

In 2013 the WCB Board of Directors initiated policy development on **Policy 1.2.5AR1: Occupational Hearing Loss – Injuries on or after January 1, 2000**, in the form of a two stage stakeholder consultation process. After extensive consultation, a revised Policy was approved effective January 1, 2015. Through the stakeholder consultation process a number of revisions were made to the policy, including the addition of a requirement for workers to have an audiogram within 5 years of leaving the noisy work environment.

In July 2016 a worker appealed their claim to the Workers' Compensation Appeals Tribunal (WCAT), arguing that the requirement to have an audiogram within 5 years of leaving the noisy work environment was inconsistent with the *Workers' Compensation Act*, and therefore not binding on WCAT. WCAT referred the issue of the 5 year requirement to the Nova Scotia Court of Appeal in the form of a 'stated case.'

In November 2017, the Court of Appeal rendered a decision on "**Surette v. Nova Scotia (Workers' Compensation Board), 2017 NSCA 81**". The Court of Appeal's order of judgement summarizes the issue and result of the decision as follows:

Issues:

Was the Board Policy which required Mr. Surette to have an audiogram within five years of leaving his employment inconsistent with the *Act*?

Result:

The Board Policy was inconsistent with the *Act*. The *Act* sets out a statutory scheme for payment of compensation for occupational diseases such as noise-induced hearing loss. The imposition of the five-year audiogram rule was contrary to the express provisions of the *Act*.

The Board of Directors has reviewed the Court decision, considered the implications on Policy 1.2.5AR1 and determined that to comply with the clear direction provided in the Court of Appeal decision, the requirement for a 5 year audiogram needs to be removed from **Policy 1.2.5AR1: Occupational Hearing Loss – Injuries on or after January 1, 2000**.

In keeping with the WCB's Policy Consultation Policy, stakeholders are provided with an opportunity to comment on this policy change. This is the only change to Policy 1.2.5AR1 that is being considered at this time. See Appendix A for revised policy.

2. PROPOSED PROGRAM POLICY APPROACH

In keeping with the direction provided by the Nova Scotia Court of Appeal, the following language will be struck from the existing Policy:

To consider entitlement for NIHL, once a worker is no longer exposed to workplace noise in excess of permissible levels, the worker must have an audiogram performed within 5 years of leaving the workplace location with the excessive noise.

3. PROVIDING YOUR COMMENTS

As stated above, the purpose of this consultation is solely to implement the clear direction from the Court of Appeal as it pertains to the reporting timelines outlined in the current policy. Should you have any comments on this change to the policy, you can share your feedback by e-mail or in writing to:

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The deadline to provide your comments is February 16th, 2018.

POLICY

NUMBER: 1.2.5AR12

Effective Date: XXXX, XXXX

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

Date Issued: XXXX, XXXX

Section: Entitlement

Date Approved by Board of Directors: XXXX, XXXX

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.

Sensorineural

Sensorineural hearing loss is due to damage to the cochlea of the cochlear nerve or the auditory pathways in the brain.

Tinnitus

Sounds heard in one or both ears or in the head (central tinnitus) in the absence of an external stimulus. Can include sounds like ringing, roaring, hissing, or buzzing.

American College of Occupational and Environmental Medicine (ACOEM)

ACOEM is the largest national college of its type in the United States that comprises a group of physicians encompassing specialists in a variety of medical practices to develop positions and policies on vital issues relevant to the practice of preventative medicine both within and outside of the workplace. It is considered the medical expert in occupational medicine.

POLICY STATEMENT

1. Noise-induced hearing loss (NIHL) 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 particular thereto. This means that in addition to meeting the entitlement criteria set out in this policy, the injury must meet the definition of occupational disease set out in the Workers' Compensation Act and Policy 1.2.14—General Entitlement—Occupational Disease Recognition.

2. Claims for occupational NIHL will be considered as follows:

Step 1: The worker has a history of occupational exposure to noise in excess of permissible levels outlined in Policy 1.2.6R. Where actual noise levels are unavailable the Workers' Compensation Board (WCB) may estimate the expected noise levels based on the information obtained from similar industries or types of work. Workers who have not been exposed to these levels will not receive compensation for NIHL because their hearing loss is not occupational.

Step 2: After it has been determined that a worker was exposed to noise in excess of permissible levels, the worker must provide audiogram evidence that shows a pattern consistent with NIHL, as per the current ACOEM Guidance Statement. In determining a pattern consistent with NIHL, the WCB uses the ACOEM Guidance Statement¹ as highlighted by the following characteristics:

- It is always sensorineural, primarily affecting the cochlear hair cells in the inner ear;
- It is typically bilateral, since most noise exposures are symmetric;
- There is insufficient evidence to conclude that hearing loss due to noise progresses once the noise exposure is discontinued. Nevertheless, on the basis of available human and animal data, which evaluated the normal recovery process, it is unlikely that such delayed effects occur; and
- Its first sign is a 'notching' of the audiogram at the high frequencies of 3000, 4000, or 6000 Hz with recovery at 8000 Hz.

The audiogram frequencies of 250-8000 Hz shall be assessed, evaluated, and rated to determine if the hearing loss pattern is consistent with NIHL as noted above.

Acknowledging some variance in specific cases, if the occupational NIHL does not meet the above pattern of hearing loss, the claim will not be accepted because the hearing loss is not caused by occupational noise.

~~To consider entitlement for NIHL, once a worker is no longer exposed to workplace noise in excess of permissible levels, the worker must have an audiogram performed within 5 years of leaving the workplace location with the excessive noise.~~ The date of the audiogram indicating NIHL will be considered the date of accident for adjudication purposes.

Step 3: After it has been determined that the worker was both exposed to occupational noise and has hearing loss showing a pattern consistent with NIHL, it must then be established that the worker meets the definition of occupational disease by satisfying one of the following criteria: death, loss of earnings, or a permanent medical impairment. To determine a permanent medical impairment, hearing loss shall be assessed, evaluated, and rated on the basis of an audiogram, as specifically plotted at the frequency levels of 500, 1000, 2000, and 3000 Hz. If the worker does not meet the requirements of an occupational disease, the claim will not be accepted because the worker does not have an injury that meets the requirements under the *Workers' Compensation Act* and related policies.

3. Medical Aid in the form of a hearing aid shall be provided to a worker for hearing loss when necessary if they have a compensable NIHL.
4. The existence and degree of a worker's permanent medical impairment rating for NIHL will be determined using the American Medical Association's "Guides to the Evaluation of Permanent Impairment—Fourth Edition" (the "AMA Guides").

¹ Occupational Noise-Induced Hearing Loss. 2012

Tinnitus

5. To establish entitlement to a permanent impairment rating for tinnitus caused by NIHL, the following circumstances must apply:
 - 5.1 There is an acceptable claim for occupational NIHL; and
 - 5.2 There is a clear and adequate medically documented history of two or more years of continuous tinnitus.
6. Claims for tinnitus caused by occupational factors other than NIHL will be adjudicated as per Policy 1.3.7—General Entitlement—Arising out of and in the Course of Employment.
7. To determine an impairment rating for tinnitus, the WCB shall use the AMA Guides.

APPLICATION

This Policy applies to decisions made on or after ~~January 1, 2015~~ XXXX.

This Policy replaces Policy 1.2.5~~ARAR1~~, approved by the Board on ~~March 16, 2000~~ October 31, 2014.

REFERENCES

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