

Section	Policy
40	44.20

Section Title: Benefits Administration - Occupational Disease
Subject: Disease/General
Effective Date: June 22, 1992

GENERAL INFORMATION

This policy deals with the adjudication of claims that involve disease. Disease can be a factor in adjudication in two ways. In the first type of claim the worker may be presenting a claim in which the disease itself is at issue and the belief is that the employment of the worker has caused the disease. In cases where the deemed date of the accident is after December 31, 1991, the concept of dominant cause is applicable and the claim must be adjudicated using what could be described as “occupational disease” criteria. In the second type of claim the disease may be believed to be not work-related, but a workplace accident has interacted with the disease in some way and the result is an enhancement or aggravation of a pre-existing condition which happens to be a disease. In this situation a claim must be adjudicated using the usual criteria.

The adjudication of any claim involving disease is complex because the WCB must determine which adjudication approach applies: the adjudication of occupational disease or the adjudication of an accident that is not an occupational disease. The second source of complexity arises from the difficult task of trying to determine the cause of a particular disease in a particular person. Medical science has historically concentrated insufficient effort on this task to be of assistance in making such determinations with a reasonable degree of confidence.

This policy introduces an approach for adjudication of claims involving disease whether that claim is to be adjudicated as a claim for compensation of an occupational disease, or if the disease is a pre-existing condition and the claim is to be adjudicated as an accident.

It is important to note that if a worker makes a claim for compensation the worker has the right to have the claim adjudicated as an accident or an occupational disease, dependent upon the facts which emerge from the WCB’s adjudicative enquiry and investigation.

A. POLICY

1. LEGISLATION SPECIFIC TO OCCUPATIONAL DISEASE

Section 1(1) definition of occupational disease

“occupational disease” means a disease arising out of and in the course of employment and resulting from causes and conditions;

- a) peculiar to or characteristic of a particular trade or occupation;
- b) peculiar to the particular employment; or
- b.1) that trigger post-traumatic stress disorder;

but does not include

- c) an ordinary disease of life; and
- d) stress, other than an acute reaction to a traumatic event;

Section 1(1.1) Restriction on definition of “accident”

The definition of “accident” in subsection (1) does not include any change in respect of the employment of a worker, including promotion, transfer, demotion, lay-off, or termination.

Section 1(12) Deemed date of accident

Where an impairment or loss of earnings of a worker is caused by an occupational disease, the day on which the impairment or loss of earnings began, as determined by the board, is deemed to be the day of the accident.

Section 4(4) Cause of occupational disease

Where an injury consists of an occupational disease that is, in the opinion of the board, due in part to the employment of the worker and in part to a cause or causes other than the employment, the board may determine that the injury is the result of an accident arising out of and in the course of employment only where, in its opinion, the employment is the dominant cause of the occupational disease.

2. DEFINITIONS RELEVANT TO OCCUPATIONAL DISEASE

A number of terms arise directly from the legislation that requires operational definition. For the purpose of this policy the following definitions apply.

a) “peculiar to or characteristic of a particular trade or occupation”

A disease will be described as being peculiar to or characteristic of a particular trade, work process, or occupation if there is a preponderance of scientific evidence to support a conclusion that the nature of the work processes or environment have significantly increased the likelihood of causing a particular disease in the workers who work in that trade or occupation.

b) “peculiar to the particular employment”

A disease will be described as being peculiar to the particular employment if:

1. there are factors identifiable in that workplace that are known to cause the disease, or
2. there is scientific evidence acceptable to the WCB that the particular workplace is the cause of a significantly increased risk of the disease even though the cause has not been identified, or
3. a factor can be identified at the workplace as being the proximate cause of the disease.

c) “ordinary disease of life”

An ordinary disease of life is a disease that can be commonly acquired from a variety of life situations. A disease will not be considered to be an ordinary disease of life if the risk of contracting the disease

through the employment can be shown to be greater than the risk associated with ordinary living experience.

d) “acute reaction to a traumatic event”

Referring to stress, an acute reaction is a reaction that creates a condition in the worker that is clearly discrete from the condition previous to the event. The traumatic event is an identifiable physical or psychological occurrence, occurs in an identifiable time frame that is normally of brief duration, is not a series of minor occurrences, and is capable of causing serious physical or psychological harm consistent with the acute reaction.

e) “dominant cause of the occupational disease”

If the combined effect of the employment causes exceeds the combined effect of the non-employment causes then the work will be deemed to be the dominant cause of the disease.

3. POLICY APPLICATION

a) The WCB will determine:

1. the existence of a disease,
2. the nature of the disease in question,
3. the circumstances surrounding the manner in which the disease arose.

b) The WCB will then determine if the disease is an occupational disease by applying the criteria in *The Workers' Compensation Act* and this policy. To be an occupational disease the disease must be:

- i. particular to or characteristic of a particular trade or occupation,
or,
- ii. peculiar to the particular employment (of the worker)

As well the disease must be neither:

- i. an ordinary disease of life, nor,
- ii. stress, unless that stress is an acute reaction to a traumatic event.

If it is determined that the disease is not an occupational disease, but the claim should be adjudicated as an accident the claim will be subject to the WCB policy on *pre-existing conditions* and general policy on *arising out of and in the course of employment*.

c) If it is determined that the disease is an occupational disease the following steps apply:

1. If the WCB determines that there are multiple causes that contributed to the disease, compensability will be contingent upon the worker's employment, on the balance of probabilities, being the dominant cause of the disease. (The dominant cause requirement, in the *Act*, applies only to the compensability of occupational disease. It does not apply to the claims attributed to workplace accidents even when

the accident involves a disease as a pre-existing condition or a disease as a result of an accident.)

2. The disease is not compensable if caused by any change in respect of employment, including promotion, transfer, demotion, lay-off, or termination.
3. Synergistic effects will be considered in the determination of dominant cause. If the synergy is between similar sources (work or non-work), the entire increased effect will be attributed entirely to work or non-work, as the case may be. If the synergy is a combination of work and non-work sources, the WCB will assess the case on the merits of available medical and scientific evidence.
4. REMOVAL OF CLAIM COSTS

With the exception of noise-induced hearing loss claims, the application of cost relief or cost transfer for claims involving long-latency occupational disease is set out in schedule E of policy 31.05.10, *Cost Relief/Cost Transfer - Class E*, and in schedule A of policy 31.05.15, *Cost Transfer - Self Insured*. Policy 44.20.50.20, *Noise-Induced Hearing Loss*, details the method for assigning claim costs among employers for noise-induced hearing loss claims.

B. REFERENCES

The Workers Compensation Act, sections 1(1), 1(1.1), 1(12), and 4(4)

WCB Policy 31.05.10, *Cost Relief/Cost Transfer - Class E*

WCB Policy 31.05.15, *Cost Transfer - Self Insured*

WCB Policy 44.05, *Arising Out of and In the Course of Employment*

WCB Policy 44.10.20.10, *Pre-Existing Conditions*

WCB Policy 44.20.50.20, *Noise-Induced Hearing Loss*

History:

1. Policy originally approved by Board Order 33/92 on June 22, 1992, effective immediately.
2. Minor formatting changes made to the policy and typographical errors were corrected, June 27, 2012.
3. Policy amended by Board Order 54/2015 on December 17, 2015. Policy was revised to reflect the legislative presumption regarding Post-Traumatic Stress Disorder (PTSD).
4. Section 4 (Removal of Claim Costs) added to the policy November 10, 2017 to reflect Schedule E of the new policy 31.05.10, *Cost Relief/Cost Transfer - Class E* and Schedule A of policy 31.05.15, *Cost Transfer - Self Insured*, which provide for the relief and transfer of claim costs involving long-latency occupational disease claims. Reference section also updated to reflect policies associated with the new rate model.