WCB Policy 44.05, *Arising out of and in the Course of Employment*

Administrative Guidelines

INTRODUCTION

When determining whether an accident is related to a worker's employment, the WCB will apply the principles outlined in Policy 44.05. Each case must be decided on its merits.

However, as noted in the policy, it can be challenging to determine whether an accident arose in the course of employment (i.e. occurred at or during work) in circumstances where the time and place of a worker's accident are not clearly connected to their hours of work or their workplace.

These guidelines provide further detail on how the WCB determines whether a worker's accident arose in the course of their employment when they are injured someplace other than on the employer's premises.

They also describe how the WCB determines whether a worker's accident arose out of and in the course of their employment when the worker's accident is an "ordinary disease of life" as described in WCB Policy 44.20, *Adjudication of Occupational Disease Claims.*

Finally, the guidelines address how the WCB determines whether there is sufficent evidence to rebut the presumption that a worker's accident arose out of their employment (i.e. was caused by employment-related exposures or activities) when non work-related factors have caused or contributed to the worker's injury.

A. WHEN DOES AN ACCIDENT ARISE IN THE COURSE OF EMPLOYMENT?

When worker's accident occurs on their employer's premises, at a time when a worker might reasonably be expected to be there, the WCB generally considers the worker's accident to have occurred in the course of their employment (i.e. at work).

For the purpose of the policy, an employer's premises may include any land, buildings or space owned, controlled rented, leased or used for the purpose of carrying out the employer's business.

In some circumstances, the WCB may consider a worker's accident to have occurred at work when it does not occur on the employer's premises. The WCB may make such a finding if the evidence demonstrates that the worker was at that location to discharge an employment-related duty, or for a purpose incidental to their employment.

The same principles apply to work-related travel. When determining whether a worker's accident arose in the course of the worker's employment, it is important to consider the degree of influence the employer had over the worker's activity, travel or presence at the location where they were injured. The more the evidence demonstrates that the employer is responsible for the worker being at a particular location at a particular time, the more likely it is that the WCB will determine that the worker's accident arose in the course of employment.

B. DETERMINING WORK-RELATEDNESS FOR "ORDINARY DISEASES OF LIFE"

WCB Policy 44.20 describes an "ordinary disease of life" as "a disease that is common in the general population and often attributable to non work-related factors". Examples of ordinary diseases of life include the common cold, the flu, and COVID-19. Such diseases are considered ordinary diseases of life because they are widespread in the community and are not peculiar to or characteristic of a particular trade or occupation.

The WCB will determine that an ordinary disease of life arose in the course of a worker's employment if it is satisfied, based on the evidence, that the worker more likely contracted the disease at work than not. The WCB will determine that an ordinary disease of life arose out of worker's employment if it is satisfied, based on the evidence, that the worker more likely contracted the disease while engaging in an activity related to their employment than not.

If the evidence establishes that either of these is true, then the other is presumed to be true, unless there is actual affirmative evidence to establish the contrary (i.e. unless there is affirmative evidence to establish that worker probably contracted the disease somewhere other than at work, or that the worker probably contracted the disease through an activity unrelated to their employment).

Because of the multiple opportunities to contract ordinary diseases of life, there is frequently insufficient evidence to establish that a worker contracted them either at work or through workplace activities or exposures. In some cases, however, there may be sufficient evidence to meet one of or both of these criteria. For example, if evidence demonstrates that there were few opportunities to contract the disease outside of work, or that the worker's activities or workplace exposures put them at greater risk of contracting the disease, this may be sufficient to establish work-relatedness, absent evidence to the contrary.

C. NON WORK-RELATED FACTORS AND REBUTTING "ARISING OUT OF" PRESUMPTION

When the evidence demonstrates that a worker's accident arose in the course of their employment (i.e. occurred at work), the WCB will presume that it arose out of their employment (i.e. was caused by workplace activities or exposures) unless there is affirmative evidence to prove the contrary.

In cases where the "but for" standard of causation applies (i.e. in claims other than occupational disease claims), to rebut the presumption, the evidence must show that work activities and exposures **were not a necessary cause** of the worker's accident (i.e. the workplace activities and exposures did not contribute to cause the injury).

Sometimes, one or more non work-related factors contribute to cause a worker's accident. Common examples include:

- **pre-existing conditions** (i.e. medical conditions of the worker that existed prior to their workplace injury);
- **serious and wilful misconduct** (i.e. voluntary acts of the worker that demonstrate a reckless disregard for the worker's own safety, and which the worker should have recognized as being likely to result in a personal injury); and
- **intoxication**.

Even if such factors contribute to a worker's accident, however, it is important to note that this is insufficient to rebut the presumption. The presumption will not be rebutted unless the evidence demonstrates that work activities and exposures were not a contributing cause of the accident (e.g. the pre-existing condition, serious and wilful misconduct or intoxication caused the accident, and the fact that the injury happened at work was merely co-incidental).

There is, however, one exception to this general rule. Where the evidence establishes that:

- a worker's accident occurred at work;
- the accident occurred while the worker was providing assistance to a member of the public in distress (i.e. the worker's accident was caused by this, specific non-work activity); and
- the worker's assistance was necessary to assist the person in question

the WCB will determine that the accident arose out of the worker's employment on public policy grounds.

Occupational disease claims are adjudicated using a different standard of causation. Further guidance on applying the dominant cause standard of causation in occupational disease claims and the occupational disease presumption is available in WCB Policy 44.20, *Adjudication of Occupational Disease Claims.*