A. POLICY PURPOSE

This policy describes one of the key tests that must be met before an injured worker will be entitled to compensation under *The Workers Compensation Act* (the Act). Section 4(1) of the Act provides that compensation will be paid if a worker experiences a personal injury by accident arising out of and in the course of employment.

Before a person is entitled to workers compensation, the WCB must therefore determine that:

- The person is a worker as defined by the Act;
- The person performs services in an industry that is covered under the Act;
- The person suffered a personal injury by accident; and
- The accident arose out of and in the course of employment.

This policy focuses on the reasoning process the WCB uses to determine whether an accident arose out of and in the course of employment. It also explains how and when the WCB applies the presumption found at section 4(5) of the Act.

B. IS A WORKER'S ACCIDENT RELATED TO THEIR EMPLOYMENT?

The Act defines an accident as:

- a chance event occasioned by a physical or natural cause;
- a willful and intentional act that is not the act of the worker, or
- an event or condition, or combination of events or conditions, related to the worker's work or workplace

that results in a personal injury to a worker. To be compensable, an accident must arise out of and in the course of employment.

The words "arising out of and in the course of employment" in section 4(1) of the Act serve to limit the circumstances in which compensation will be payable to injured workers. Because the workers compensation system is designed to compensate workers for **workplace** injuries, not all injuries, it is necessary for there to be a connection between the worker's accident and their employment before compensation is payable.

When determining that a worker’s accident arose out and in the course of employment, the standard of proof the WCB applies is the “balance of probabilities” (i.e. more likely than not) standard outlined in WCB Policy 22.00, *Decision Making.*

I. Arising in the course of employment

It is often quite simple to determine that a worker's accident arose in the course of employment.

A worker's accident arises in the course of their employment when it occurs at or during work. In determining whether a worker's accident arose in the course of employment, the WCB generally focuses on evidence regarding the time and location of the accident. If the event(s) that caused

the worker's injury occurred during work, at a place where the worker is reasonably expected to be, the accident arose in the course of employment.

In some circumstances, this determination can be more challenging. The Administrative Guidelines to this policy provide guidance on making this determination in specific situations where the time and/or location of the worker's accident are less clearly connected to their hours of work or their workplace. Some examples include travelling on the job, special assignments, parking lots, shared premises, temporary worksites, shopping malls, overnight travel and working from home.

II. Arising out of the employment

A worker's accident arises out of their employment when employment related activities or exposures cause the accident.

The WCB interprets the concept of "employment related activity" broadly, to include activities that are both directly and incidentally related to the worker's employment. In other words, the activity causing the worker's injury need not be directly related to a specific job task. If the activity is reasonably incidental to the obligations and expectations of the employment, then the WCB will consider it to be an employment related activity.

In determining whether a worker's accident arose out of their employment, the WCB must employ the appropriate standard of causation.

As outlined in WCB Policy 22.00, *Decision Making,* in the case of most injuries, the appropriate standard of causation is the "but for" standard of causation. Where the "but for" standard of causation applies, work activities or exposures do not have to be the sole or dominant cause of the worker's injury. However, the work activities or exposures must have been a necessary cause.

In the case of occupational diseases, the dominant cause standard of causation applies. In such cases, the WCB will determine that the worker's accident arose out of their employment only if work activities or exposures are the dominant or principal cause of the worker's occupational disease.

Further guidance on adjudication of occupational disease claims is available in WCB Policy 44.20, *Adjudication of Occupational Disease Claims*.

III. "Arising out of AND in the course of employment"

In most cases the evidence will make it clear that the worker's injury arose both out of and in the course of their employment or, alternatively, that the injury arose neither out of nor in the course of their employment.

Where the evidence establishes that the worker's accident **not only** arose out of their employment (i.e. that work activities or exposures caused the accident), **but also** that it arose in the course of employment (i.e. that the accident occurred at or during work), the legal test of "arising out of and in the course of employment" is met. The accident is related to their employment in both ways.

When there is insufficient evidence to establish that a worker's accident arose out of their employment **and also** insufficient evidence to establish that it arose in the course of their employment, the legal test of "arising out of and in the course of employment" is not met. The accident is not related to their employment.

If the evidence establishes that the accident arose out of the worker’s employment, but there is insufficient evidence to establish that it arose in the course of their employment or vice versa, the WCB must apply the presumption found at section 4(5) of the Act.

IV. Applying the presumption

Section 4(5) of the Act states:

> *4(5) Where the accident arises out of the employment, unless the contrary is proven, it shall be presumed that it occurred in the course of the employment; and, where the accident occurs in the course of the employment, unless the contrary is proven, it shall be presumed that it arose out of the employment.*

Statutory presumptions remove the obligation to prove a connection between facts, or a connection between facts and a certain outcome. Accordingly, section 4(5) of the Act eliminates the need for evidence to establish that a worker's accident both arose out of their employment and arose in the course of their employment.

As long as the evidence demonstrates that the worker's accident arose out of their employment (i.e. was caused by work activities or exposures), the WCB will presume that it arose in the course of their employment (i.e. that it arose at or during work), **unless** there is evidence to prove that the accident **did not** arise in the course of the worker's employment.

The inverse is also true. As long as the evidence demonstrates that the worker's accident arose in the course of their employment (i.e. arose at or during work), the WCB will presume that it arose out of their employment (i.e. was caused by work activities or exposures), **unless** there is evidence to prove that the accident **did not** arise out of the worker's employment.

Insufficient evidence does not constitute "proof to the contrary" for the purposes of the presumption. In cases where there is insufficient evidence to prove that one of the two conditions has been met, but there is sufficient evidence to prove that the other condition has been met, the presumption will apply.

C. REFERENCES

The Workers Compensation Act, sections 4(1), 4(4), 4(4.1), 4(5), 60(2)(b)

Related WCB Policies:

22.00, *Decision Making*
44.10.20.10, *Pre-existing Conditions*
44.20, *Adjudication of Occupational Disease Claims*
44.05.30, *Adjudication of Psychological Injury Claims*

History:
1. Policy 44.05 established by Board Order 33/06 on September 28, 2006, to describe the concept of “arising out of and in the course of employment” as stated in *The Workers Compensation Act*, effective October 1, 2006.
2. Minor formatting and wording changes were made to the policy, June 27, 2012.
3. March 2014 - Reference section revised to refer to Policy 44.05.30 *Adjudication of Psychological Injuries* rather than 44.20.60 *Psychological Conditions.*
4. October 2019 - Reference section revised to add Policy 22.00, *Decision Making* and remove two repealed policies (44.10.20.20, *Ganglia* and 44.10.40.10, *Insect Bites*).
5. October 2019 - Policy revised to parallel changes made to policy 44.10.70.50, *Public Interest Emergency Actions*.
6. Minor formatting changes were made to the policy, April 2021.

7. Policy amended by Board Order No. 28/22 on September 29, 2022 effective January 1, 2023. The amendments more closely align the policy to *The Workers Compensation Act* and more clearly explain the application of the presumption in section 4(5) of the Act and remove references to several repealed policies.