

Section	Policy
40	44.10.20.10

Section Title: Benefits Administration - *Adjudication and Compensation*
Subject: Pre-existing Conditions
Effective Date: For decisions on or after January 1, 2015 to December 31, 2022

A. POLICY PURPOSE

The Workers Compensation Act states:

"Where, in any industry within the scope of this Part, personal injury by accident arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part shall be paid by the board out of the accident fund, subject to the following subsections."

The Workers Compensation Board (WCB) will not provide benefits for disablement resulting solely from the effects of a worker's pre-existing condition as a pre-existing condition is not "personal injury by accident arising out of and in the course of the employment." The WCB is only responsible for personal injury as a result of accidents that are determined to be arising out of and in the course of employment.

The traditional approach of dealing with pre-existing conditions that categorizes them as being either static or deteriorating has been simplified in this policy by dealing with the two concepts in the same framework.

B. POLICY

1. Wage Loss Eligibility

- a. When a worker's loss of earning capacity is caused in part by a compensable injury and in part by a non-compensable pre-existing condition or the relationship between them, the WCB will accept responsibility for the full injurious result of the compensable injury.
- b. When a worker has:
 - 1) recovered from the workplace accident to the point that it is no longer contributing, to a material degree, to a loss of earning capacity, and
 - 2) the pre-existing condition has not been enhanced as a result of compensable injury arising out of and in the course of the employment, and
 - 3) the pre-existing condition is not a compensable condition, the loss of earning capacity is not the responsibility of the WCB and benefits will not be paid.

Evidence concerning the progression of a pre-existing condition based on statistical norms (such as those contained in standardized disability guides), or predictions based on the best available data, may be considered as evidence. However, when it is determined that the worker's inability to work is a result of a compensable injury and evidence suggests, on a balance of probabilities, that the compensable injury, or the compensable injury in concert with the pre-existing condition, is causing the on-going loss of earning capacity the WCB would pay so long as the loss of earning capacity continues.

2. Standard of Proof

Long-standing WCB practice has been to use a standard of proof based on a "balance of probabilities." This is ordinarily the standard of proof used in civil litigation. There is an obligation in such a system for the WCB to conduct an enquiry to ascertain the best information available upon which to make its judgement. The worker, the employer, and the attending physician are responsible for co-operating with the WCB and supplying the WCB with any information which it is within their power to provide.

3. Impairment Benefit Eligibility

The impairment rating will be established by the WCB's Healthcare Services Department in accordance with this policy and the Schedules of policy 44.90.10, *Permanent Impairment Rating*.

The existence of a pre-existing condition will not negate an injured worker's entitlement to an impairment benefit arising from a WCB accepted injury. If a worker has a pre-existing condition, the worker is eligible for an impairment rating based on the difference between the total rating and the rating assigned to the pre-existing condition. The WCB Healthcare Advisor will assign a fair rating to the pre-existing condition based on the best information available.

When it is reasonable to do so, the assigned rating for the pre-existing condition will be based on the Schedules of policy 44.90.10. However, when this is not practical, the impairment rating assigned to the pre-existing condition will be determined as follows:

- 1) A pre-existing condition that is determined to be minor will be assigned a 0% impairment rating;
- 2) A pre-existing condition that is determined to be major will be assigned an impairment rating equivalent to 50% of the impairment rating for that structure.

A pre-existing condition is considered to be major for the purpose of the impairment rating if:

- 1) The impairment was/is significantly affected by the pre-existing condition; or
- 2) The diagnosis accepted by the WCB was adjudicated as an enhancement of a pre-existing condition; or
- 3) The diagnosis accepted by the WCB would not have occurred in the absence of the pre-existing condition.

The presence of a co-existing condition will be treated the same as a pre-existing condition for the purpose of the impairment rating. A co-existing condition is a medical condition that occurs after the date of a compensable injury.

4. Occupational Illness

Adjudication of claims for disabilities that meet the definition of occupational illness will be governed by policies established for occupational illness.

5. Removal of Claim Costs

The application of cost relief for pre-existing conditions is set out in Schedule A of policy 31.05.10, *Cost Relief/Cost Transfer - Class E Employers*.

C. DEFINITIONS

1. Pre-existing condition: A pre-existing condition is a medical condition that existed prior to the compensable injury.
2. Aggravation: The temporary clinical effect of a compensable injury on a pre-existing condition such that the pre-existing condition will eventually return to its pre-accident state unaffected by the compensable injury.
3. Enhancement: When a compensable injury permanently adversely affects a pre-existing condition.

D. REFERENCES

The Workers Compensation Act, sections 4(1) and 81(1)(c)(i) (On or after January 1, 1992)

Related WCB Policies:

31.05.10, *Cost Relief/Cost Transfer - Class E Employers*

44.90.10, *Permanent Impairment Rating*

History:

1. Approved by the Board of Directors by Board Orders 30/92 and 38/92 on June 22, 1992, effective June 23, 1992.
2. Minor title changes made to the policy and Schedule I was deleted as it is not referenced in the policy – November 2002.
3. Minor grammatical changes made throughout the policy.
4. Minor formatting and grammatical changes were made to the policy and the history section has been updated, June 27, 2012.
5. Policy updated by Board Order No. 34/14 on October 30, 2014, effective January 1, 2015. Policy updated with respect to the effect of pre- or co-existing conditions on impairment rating, to reflect revisions to Policy 44.90.10, *Permanent Impairment Rating*.
6. Policy updated November 10, 2017 to reflect consequential amendments to incorporate changes arising out of transition to the new rate setting model. Changes also made to reference the division of the revised Impairment Rating Schedule.
7. Minor formatting changes were made to the policy, April 2021.
8. In September 2022, the name of policy 31.05.10 was changed from *Cost Relief/Cost Transfer - Class E* to *Cost Relief/Cost Transfer - Class E Employers*.
9. Policy updated by Board Order No. 40/22 on December 15, 2022, effective for decisions on or after January 1, 2023. Revisions include clarifying that workers are entitled to compensation when a pre-existing condition contributes to the severity of a workplace injury or significantly prolongs their recovery; and how a worker's impairment rating is determined when they have a pre-existing condition. Changes also state, in plain language, that compensation is payable to workers when the workplace injury worsens their pre-existing condition; and wage loss benefits will continue to be paid to the worker if the loss they are experiencing is, to some degree, due to their work-related injury. References and a brief explanation of the additional policies relevant to the payment of compensation for claims involving pre-existing conditions were added to the policy. The previous policy version was removed from the policy manual and archived December 31, 2021.