

Section	Policy
40	44.10.20.50

Section Title: Benefits Administration - Adjudication and Compensation
Subject: Recurring Effects of Injuries
Effective Date: January 1, 2001, to December 31, 2005

GENERAL INFORMATION

Many workers return to work and then subsequently discover that their original injury has not healed. This policy establishes criteria which apply in those instances in order to determine a worker's eligibility for recalculation of benefits.

The policy first establishes the difference between the new accident and the recurring effects of a previous injury. It then sets out the tests that determine if a worker's benefits should be recalculated in the event of a recurrence of the effects of a previous injury. Providing a consistent basis for differentiation, and thus the criteria for eligibility for recalculation, allows the WCB to properly apply the provisions of *The Workers Compensation Act* in order to fairly compensate workers and to properly allocate costs in respect of the experience rating system.

A. POLICY

When a worker has returned to work following a compensable injury, and when that worker subsequently suffers a further loss of earning capacity or further disability as a consequence of that injury, the WCB will award compensation benefits to the worker during the current loss of earning capacity (for accidents occurring on or after January 1, 1992) or for the further disability (for accidents occurring prior to January 1, 1992).

ON OR AFTER JANUARY 1, 1992

1. The first determination in establishing eligibility for benefits in the case of a loss of earning capacity is whether or not the loss is due to a new and separate accident. The distinction between a new accident and the recurring effects of a previous injury will be based on whether or not the current loss of earning capacity is a consequence of the original compensable injury and whether or not there was an intervening incident that contributed to the injury.
2. New Accident- If the current loss of earning capacity results from an accident that has no relationship to a previous injury, in that it does not evolve from injury to the same body part or anatomical site as the original injury; or, the worker's condition is not consistent with the details of the accident and the diagnosis as established in the original claim, then the current loss of earning capacity will be considered to result from a new and separate accident.

If there was an intervening incident, event, or exposure deemed capable of either causing the injury, or aggravating a previous susceptibility to injury, it will also be considered a new and separate accident.

When a determination is made that the current loss of earning capacity is the result of a new accident, compensation benefits will be calculated based on the worker's average earnings at the time of the new accident.

3. **Recurrence:** If the WCB determines that the current loss of earning capacity is not the result of a new accident, then it will be considered a recurrence of the effects of a previous injury.

A recurrence is a clinically demonstrated increase in permanent impairment which results in a loss of earning capacity, or a disability which has been directly related to a previous compensable condition and has resulted in a current loss of earning capacity.

4. When the WCB determines that the worker has not established a real and substantial attachment to the labour force and the current loss of earning capacity is a continuing result of the original injury, benefits will be determined in the same manner and are subject to the same conditions as would be the case for continuous benefits associated with the original injury.
5. When the WCB determines that the worker has established a real and substantial attachment to the labour force at the time of the recurrence, the worker is entitled to have his or her benefits based on whichever net average earnings are higher – at the time of the recurrence or at the accident date.
6. For the purposes of this policy, the following definition applies when determining "a real and substantial attachment to the labour force":

The worker's compensable condition has clinically stabilized and he or she has been able to sustain an attachment to the labour force for what the WCB considers a sufficient period, usually not less than 12 weeks.

PRIOR TO JANUARY 1, 1992

1. The first determination in establishing eligibility for benefits in the case of a current disability is whether or not the disability is due to a new and separate accident. The distinction between a new accident and the recurring effects of a previous injury will be based upon whether or not the current disability is a consequence of the original compensable injury and whether or not there was an intervening incident that contributed to the injury.
2. **New Accident:** If the current disability results from an accident which has no relationship to a previous injury, in that the current disability does not evolve from injury to the same body part or anatomical site as the original injury; or, the worker's condition is not consistent with the details of injury and the diagnosis as established in the original claim, then the current disability will be considered a new and separate accident.

If there was an intervening incident, event, or exposure deemed capable of either causing the injury, or aggravating a previous susceptibility to injury, it will also be considered a new and separate accident.

When a determination is made that the current disability is the result of a new accident, compensation benefits will be calculated based on the worker's average earnings at the time of the new accident, as provided for in *The Workers Compensation Act*.

3. **Recurrence:** If the WCB determines that the current disability is not the result of a new accident, then it will be considered a recurrence of the effects of a previous injury.

A recurrence is a clinically demonstrated increase in permanent impairment; or a disability which has been directly related to a previous compensable condition.

4. If at the time of the recurrence, the worker's return to employment was not successful, in that he or she was unable to fulfil the job requirements, and this became apparent very soon after the return to work, the worker would not be eligible for a review or subsequent increase to benefits. Benefits will be determined in the same manner and are subject to the same conditions as would be the case for continuous benefits associated with the original injury.
5. If at the time of the recurrence, the worker's return to employment had been successful, in that he or she was able to complete the required duties initially and did not encounter difficulties very soon after the return to work, the worker would be entitled to benefits re-calculated based on the average earnings at the time of recurrence, if those earnings are greater than at the time of the original accident.
6. When a worker suffers a compensable injury prior to January 1, 1992, and when that worker subsequently suffers a further disability that is deemed to be a recurrence on or after January 1, 1992, the benefits to which the worker is entitled as a result of the recurrence will be calculated based on *The Workers Compensation Act* in effect at the time of the original accident. When the average earnings at the time of the original accident have been restricted by the maximum in effect in the Act at that time, the earnings basis, in consideration of Section 45, will be adjusted as provided for in Sections 49(2), 49(3) and 49(4) of the Act as it applies after January 1, 1992.
7. When a worker suffers a compensable injury prior to January 1, 1992, and as a result is receiving a Permanent Partial Disability pension, or has received a commutation of a Permanent Partial Disability pension and when the worker subsequently suffers a recurrence of the original injury entitling him or her to Temporary Total Disability benefits, the amount of the pension will be deducted from TTD benefits until such a time as the TTD benefits are terminated.

B. REFERENCES

The Workers Compensation Act, section 49(1) [**prior to January 1, 1992**]

The Workers Compensation Act, sections 40(5), 40(6), 40(7), 49(3), 49(4) and 49(5) [**on or after January 1, 1992**]

Policy 44.10.20.55, *TTD Benefits to Retired Workers in Cases of Recurrence*

Policy 44.80.30.20, *Post-Accident Earnings - Deemed Earning Capacity*

History:

1. Policy approved by Board Order 7/93 on February 25, 1993, effective immediately.
2. Policy 44.10.20.50 amended by Board Order 13/00 on April 27, 2000.
3. Administrative Guidelines have been added to this policy – November 2002.

4. Policy 44.10.20.50 was rescinded by Board Order No. 27/05 on September 29/05 effective January 1, 2006. This policy has been split into two based on the compensation rate, clarifying that the date of accident will influence the level of net average earnings that the WCB may use to pay benefits and highlighting that claim costs may be removed in some situations. This policy will continue to apply to any decisions made on accidents which happened from January 1, 2001 to December 31, 2005 and any reconsiderations and appeals that derive from these decisions.
5. Minor formatting, grammar, and typographical changes were made to the policy and the history section was updated, June 27, 2012.
6. Reference section updated to add Policy 44.80.30.20, *Post-Accident Earnings - Deemed Earning Capacity*, April 1, 2014.

C. ADMINISTRATIVE GUIDELINES

FOR ACCIDENTS ON OR AFTER JANUARY 1, 1992

If the current loss of earning capacity is accepted as a recurrence, the wage loss benefit will be based on the **greater of**:

the worker's **net average earnings** at the time of the original accident as if payments were made continuously from the date of the accident, adjusted for indexing and changes to the tax credits/deductions to the date of the recurrence; **or**

the worker's **net average earnings** at the time of the recurrence, using tax credits/deductions in effect at the time of the recurrence.

FOR ACCIDENTS PRIOR TO JANUARY 1, 1992

If the current loss of earning capacity is accepted as a recurrence, the wage loss benefit will be based on the **greater of**:

the worker's **average earnings** at the time of the original accident as if payments were made continuously from the date of the accident, adjusted for indexing to the date of the recurrence;
or

the worker's **average earnings** at the time of the recurrence.