

Section	Policy
40	44.10.20.70

Section Title: Benefits Administration – *Adjudication and Compensation*
 Subject: Recurring Effects of Injuries and Illness (Recurrences)
 Effective Date: January 1, 2020 (This policy applies to decisions made on accidents which occurred before January 1, 1992)

A. GENERAL INFORMATION

The date of accident determines which workers compensation legislation applies to a claim. *The Workers Compensation Act* (the Act) that is in force on the date of accident is the Act that applies to that claim, even if the Act has been repealed. The Act will determine the type and amount of compensation payable to injured workers and their dependants.

Many injured workers return to work and then subsequently discover that they have not recovered from their original injury or illness. They suffer an increase in permanent disability or relapse of their disability that result in a disablement that arises from the original compensable injury or illness. In these situations, the worker has experienced a recurrence.

When a recurrence has occurred, this policy establishes criteria to determine whether a worker's Workers Compensation Board (WCB) benefits should be recalculated. The policy first distinguishes between a new and separate accident and the recurring effects of a previous injury or illness. It then sets out a test that determines whether a worker's benefits should be recalculated.

In some circumstances, the WCB may remove all or a portion of the claim costs related to a recurrence from the accident employer's claim costs experience.

B. POLICY

When a worker makes a claim with the WCB, it will determine whether the worker is entitled to benefits and services under the Act. If the WCB decides that the worker is entitled to compensation under the Act, the WCB must next decide whether the worker has suffered a new accident or a recurrence.

When a worker has returned to work following a compensable injury or illness, and subsequently suffers a further disability as a result of that same injury or illness, the WCB will award compensation benefits to the worker for the further disability.

The compensation benefits to which a worker is entitled as a result of a recurrence will be based on *The Workers Compensation Act* in effect at the time of the original accident. This policy sets out the details for determining the calculation of benefits for recurrences under the compensation scheme for workers who had accidents before January 1, 1992.

Accidents Before January 1, 1992

1. Prior to determining the type and amount of compensation benefits payable, the WCB must first determine whether the worker's current disability is the result of a new and separate accident or a recurrence. The distinction between a new accident and the recurring effects of a previous injury or illness will be based upon whether the current disability is a consequence of the original compensable injury or illness or an intervening incident event, or exposure that contributed to the injury.

2. New Accident:

The WCB will consider that the current disability results from a new and separate accident if the accident has no relationship to a previous injury or illness. The current disability has no relationship to a previous injury or illness if the same body part or anatomical site as the original injury or illness is not injured or the worker's condition is not consistent with the details of the accident and the

diagnosis as established in the original claim.

If there was an intervening incident, event, or exposure deemed capable of either causing the injury, or aggravating a previous susceptibility to injury, the WCB will also consider the current disability the result of a new and separate accident.

When the WCB has determined that the current disability is the result of a new accident, compensation benefits will be based on the worker's average earnings at the time of the new accident. These average earnings will be calculated using section 45 of the existing Act and policy 44.80.10.10, *Average Earnings*, in effect on the accident date.

3. Recurrence:

If the WCB determines that the current disability is not the result of a new and separate accident, then the current disability will be considered a recurrence of the effects of a previous injury or illness.

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

4. When the WCB determines the worker's return to employment was not successful at the time of the recurrence and the current disability is a continuing result of the original injury or illness, the worker's compensation benefits will be based on the pre-accident average earnings (indexed) as would be the case for continuous benefits associated with the original injury or illness. A worker's return to employment was not successful if he or she was unable to fulfil the job requirements and this became apparent very soon after the worker's return to employment.
5. If the worker's return to employment had been successful at the time of the recurrence, the worker is entitled to have his or her compensation benefits based on whichever average earnings are higher - at the time of the recurrence or at the accident date. Where applicable, the WCB will consider maximum annual earnings levels.

The WCB will apply any applicable adjustments for indexing to the worker's average earnings from the date of accident to determine the current value of these average earnings to use in the above comparison.

The worker's average earnings determined above cannot exceed the average earnings based on the 1991 maximum annual earnings level. The WCB will also apply any applicable adjustments for indexing to this maximum annual earnings level to determine the current value of these average earnings at the recurrence date.

A worker's return to employment was successful if he or she was able to complete the required duties initially and did not encounter difficulties very soon after the worker's return to employment.

6. 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 where the worker subsequently suffers a recurrence of the original injury entitling him or her to Temporary Total Disability (TTD) benefits, the amount of the pension will be deducted from TTD benefits until such a time as the TTD benefits are terminated.

TTD benefits will not be paid when a worker has retired from the labour force and suffers a recurrence of an injury that initially occurred prior to January 1, 1992.

Removal of Claim Costs

In some circumstances, all or part of the claim costs of a recurrence may be removed from the accident employer's claim costs experience. These circumstances are set out in the applicable Act and WCB policy 35.05.10, *Cost Relief/Cost Transfer - Class E*.

C. REFERENCES

The Workers Compensation Act, subsections or section 45, 49(1)-(3), 81(1) [prior to January 1, 1992]

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

History:

1. Policy 44.10.20.50 amended by Board Order 13/00 on April 27, 2000.
2. Administrative Guidelines have been added to this policy – November 2002.
3. Policy 44.10.20.50.20 approved by Board Order 27/05 on September 29, 2005. The revised policy is effective January 1, 2006. Revisions to the policy include: splitting policy 44.10.20.50 into two based on the compensation rate, clarifying that the date of accident will influence the level of gross average earnings that the WCB may use to pay benefits and highlighting that claim costs may be removed in some situations.
4. Policy amended by Board Order 27/05, on September 29, 2005 to rescind Board Order No. 13/00 effective January 1, 2006. The rescinded policy 44.10.20.50 will continue to apply to recurrence decisions made from January 1, 2001 to December 31, 2005 for accidents prior to January 1, 1992 and any reconsiderations and appeals that derive from these decisions.
5. Administrative guidelines were removed from this policy. The Board of Directors approve the policy while the administration approves the guidelines.
6. Minor formatting, grammar, and wording changes were made to the policy, June 27, 2012.
7. Reference section updated to add Policy 44.80.30.20, *Post-Accident Earnings - Deemed Earning Capacity*, April 1, 2014.
8. Policy amended by Board Order 47/19, on December 18, 2019 to incorporate the main policy statement in policy 44.10.20.55, *TTD Benefits to Retired Workers in Cases of Recurrence* into policy 44.10.20.50.20. Policy 44.10.20.55 was rescinded by Board Order 46/19 on December 18, 2019. Policy 44.10.20.50.20 is renumbered as 44.10.20.70. The policy is titled "Recurring Effects of Injuries and Illnesses (Recurrences)". The previous policy was renumbered as 44.10.20.70.01. This revised policy takes effect on January 1, 2020 and applies to pre-1992 accidents.
9. Minor formatting changes were made to the policy, April 2021.