

Section	Policy
40	44.20

Section Title: Benefits Administration - Occupational Disease
Subject: Adjudication of Occupational Disease Claims
Effective Date: For accidents on or after January 1, 2022

A. POLICY PURPOSE

Occupational diseases are frequently attributable to both work-related and non-work-related factors.

This policy outlines how the Workers Compensation Board (WCB) adjudicates occupational disease claims under *The Workers Compensation Act* (the Act). More specifically, it:

- identifies the two different adjudicative approaches that are used to determine whether a worker's occupational disease was caused by work; describes how the rebuttable presumption for occupational disease works;
- outlines the types of evidence the WCB will gather to assess and determine causation in the circumstances where the presumption does not apply; and
- determines the timing of impairment ratings for occupational diseases claims.

Policy 44.20.50.20, *Noise-Induced Hearing Loss*, provides specific guidance on the adjudication of noise-induced hearing loss claims, which are a particular type of occupational disease claim.

Policy 22.00, *Decision Making*, outlines the key legal principles and concepts that must be applied when making decisions under the Act.

A separate occupational disease presumption may apply to cancer claims for firefighters and Office of the Fire Commissioner (OFC) personnel. The primary site cancers are listed under subsection 4(5.2) of the Act. Manitoba Regulation 160/2005, *Minimum Periods of Employment and Non-Smoking – Firefighters and OFC Personnel Regulation*, lists the minimum periods of employment for each cancer and the minimum period of time a worker must be a non-smoker.

B. POLICY

Key Principles

As set out in subsection 4(4) of the Act, and elaborated on in the Decision Making policy, the standard of causation for occupational disease claims is dominant cause. This standard or test requires that employment be the dominant cause of the worker's disease.

In workers compensation, the standard of proof is known as "balance of probabilities". Balance of probabilities simply means that the evidence is assessed for what is *most likely* or *most probable* or *what is more likely to be true than not true*.

Workers are entitled to compensation if the Workers Compensation Board (WCB) confirms or determines that it is more likely than not that their employment was the dominant cause of the occupational disease.

Subsection 4(4.1) of the Act also contains an occupational disease presumption. This presumption, in conjunction with the schedule of occupational diseases made by the Board of Directors by regulation, makes it easier to establish a causal link between the worker's disease and their

employment if all the criteria of the presumption have been satisfied.

Adjudicative Approach

The term "adjudicative approach" refers to the method used by the WCB to adjudicate claims. In the case of occupational disease claims, the Act mandates two separate adjudicative approaches, depending on whether the occupational disease presumption found at subsection 4(4.1) of the Act applies.

Like all other claims, occupational disease claims must meet the Act's basic criteria to be compensable. These are:

- there was an accident;
- the worker suffered an injury; and
- the injury was caused by the accident.

For the purposes of this policy, it is assumed that these three criteria are met. The only thing left for the WCB to determine is whether the worker's occupational disease arose out of and in the course of their employment.

a) Occupational Disease Presumption and Schedule of Occupational Diseases

Under this approach, the WCB uses the occupational disease presumption together with the schedule of occupational diseases to establish a link between the worker's disease and their employment. The schedule links certain employment activities or processes to specific diseases.

If the worker's disease is listed on the schedule, and the worker meets the employment criteria linked to that disease in the schedule, there is no need to establish a causal link between the worker's occupational disease and their employment on an individual basis. The causal link is presumed for all workers who have contracted that occupational disease while engaging or after engaging in the employment activities or processes listed in the schedule, unless the contrary is proven in the worker's specific case.

If the worker's occupational disease is listed in the schedule but the employment criteria linked to that disease in the schedule have not been met, the occupational disease presumption does not apply. The WCB will then adjudicate the claim on a case-by-case basis, in the same manner as it would adjudicate an occupational disease claim where the disease was not listed in the schedule. In other words, the WCB will determine whether work-related factors were the dominant cause of worker's occupational disease.

Rebutting the Presumption

It is important to note that the occupational disease presumption is rebuttable.

The presumption is rebutted, and the claim cannot be accepted, if there is sufficient evidence to prove that work-related factors were **not** the dominant cause of the worker's occupational disease. In determining whether there is sufficient evidence to rebut the presumption, the WCB must answer the following question:

- Are the non-work factors of such importance that, on a balance of probabilities, the worker's employment is not the dominant cause of the disease?

An absence of evidence is not enough to rebut the presumption.

b) Case-By-Case

Under this adjudicative approach, a worker's claim is adjudicated on its own merits taking into consideration the individual facts and circumstances about the claim.

In these cases, when determining causation, the WCB gathers, assesses and weighs all available evidence, including:

- medical evidence about the worker's current condition;
- evidence regarding the work's employment history, job duties, workplace exposures and workplace processes;
- evidence regarding the worker's personal history and any non-work related factors that may have caused or contributed to their condition, such as a pre-existing condition, family medical history, lifestyle choices, etc.; and
- medical or scientific evidence that serves to indicate that a particular disease is attributable to causes and conditions that are peculiar to or characteristic of a particular trade or occupation, or peculiar to the particular employment.

If, after reviewing and weighing all the evidence, the WCB determines that workplace exposures or processes are the dominant cause of the worker's occupational disease, the WCB will accept the claim.

Date of Accident

Many occupational diseases develop gradually over time, making it more difficult to establish a clear, unambiguous date of accident. Subsection 1(12) of the Act simplifies this determination. In cases where a worker's impairment or loss of earnings is caused by an occupational disease, the WCB will deem the accident to have occurred on the day on which the impairment or loss of earnings began.

Ordinary Disease of Life

The definition of "occupational disease" in subsection 1(1) specifies that an ordinary disease of life is not an occupational disease. An ordinary disease of life is a disease that is common in the general population and often attributable to non-work related factors.

In rare circumstances, the WCB may accept claims made by workers who contract an ordinary disease of life when it determines that the disease in question did, in fact, arise out of and in the course of employment. The WCB applies the "but for" standard of causation to these claims.

Timing of Impairment Ratings for Occupational Disease Claims

Just as with other types of injuries, sometimes an occupational disease can result in a permanent physical or functional abnormality or loss (i.e. impairment) to the worker. Where the WCB determines a worker has sustained an impairment, an impairment award is payable to the worker. To determine the amount payable, the WCB must determine the degree of impairment (impairment rating).

Policy 44.90.10 *Permanent Impairment Rating*, and the schedules attached to that policy, provide direction about when the worker's impairment rating is assessed to determine the subsequent award. In most cases, the WCB measures a worker's degree of impairment when the worker's condition stabilizes or reaches maximum medical improvement. In the case of some occupational diseases, the condition may not stabilize or improve, but instead may continuously deteriorate. In these circumstances, information regarding the worker's illness and prognosis is used to establish

an impairment rating. As the disease progresses, the WCB may reassess the worker's degree of impairment.

Impairment Awards for Terminal Occupational Disease Claims

In the case of terminal occupational diseases claims, special rules apply when the WCB pays the impairment award. Eligibility for an impairment award will be assessed as soon as practicable after the claim is accepted. The WCB will initially calculate an impairment award based on the maximum impairment rating (100%) once it is medically established that the occupational disease is terminal. The worker's impairment award will be reduced by any prior impairment percentage rating(s) issued on the worker's current claim or any prior claims.

An occupational disease qualifies as a terminal illness when the medical evidence supports that the worker has a life-expectancy of two years or less as a result of their compensable occupational disease. A claim is automatically eligible when the compensable diagnosis is mesothelioma or if it has been established that the worker's cause of death is related to the compensable occupational disease (an accepted fatal claim).

Removal of Claim Costs

With the exception of noise-induced hearing loss claims, the application of cost relief or cost transfer for claims involving long-latency occupational disease is set out in schedule E of policy 31.05.10, *Cost Relief/Cost Transfer - Class E Employers*, and in schedule A of policy 31.05.15, *Cost Transfer - Individually Assessed Employers*. Policy 44.20.50.20, *Noise-Induced Hearing Loss*, details the method for assigning claim costs among employers for noise-induced hearing loss claims.

C. References

The Workers Compensation Act – sections 1, 4, 38, 105, 117

Manitoba Regulation 160/2005, *Minimum Periods of Employment and Non-Smoking – Firefighters and OFC Personnel Regulation*

Related WCB Policies:

Policy 22.00, *Decision Making*

Policy 31.05.10, *Cost Relief/Cost Transfer – Class E Employers*

Policy 31.05.15, *Cost Transfer - Individually Assessed Employers*

Policy 44.05, *Arising Out of and in the Course of Employment*

Policy 44.10.20.10, *Pre-existing Conditions*

Policy 44.20.50.20, *Noise-Induced Hearing Loss*

Policy 44.90.10, *Permanent Impairment Rating*

History:

1. Policy was revised by Board Order No. 09/22 on April 20, 2022 effective for all accidents on or after January 1, 2022. Changes to the policy include outlining the key principles that guide the adjudication of occupational disease claims; identifying the two separate approaches to adjudicating occupational disease claims; describing how the occupational disease presumption works; specifying the evidence that is gathered in making decisions on these claims; and determining the timing of impairment ratings for occupational disease claims. The name of the policy was changed to *Adjudication of Occupational Disease Claims*. Policy 44.20, *Disease/General*, was archived and applies to accidents from January 1, 1992 to December 31,

2021 and any reconsiderations and appeals on these claims.

2. In September 2022, policy revisions respond to a change in terminology that was introduced by amendments to the Act by *The Minor Amendments and Corrections Act (MACA) 2022*. The term "self-insured employer" was replaced with "individually assessed employer". The policy was changed to reflect the new title of policy 31.05.15, *Cost Transfer - Self Insured*, which is now the *Cost Transfer - Individually Assessed Employers* policy. The name of policy 31.05.10 was also changed from *Cost Relief/Cost Transfer - Class E* to *Cost Relief/Cost Transfer - Class E Employers*.