

Practice Directive 3

Modified Employment and Timely Return to Work

Date: November 23, 1995

An important part of the WCB's partnership with workers and employers is our policy on suitable or transitional employment. It has been amply demonstrated that the earlier a worker is able to safely return to productive employment following an injury, the better his or her chances of maximum recovery. Also, employers gain the advantage of having their experienced staff back to productive work as soon as possible.

Proceeding with early return to work on a modified duties basis must be consistent with Board policy as outlined in Policy Item #34.11 of the Rehabilitation Services and Claims Manual. This section outlines the general framework under which the adjudication of selective employment must be considered. A selective employment offer by an employer must meet the following criteria:

- Be reasonably available
- Be appropriate
- Must not harm the worker nor slow recovery
- Must be productive

The initiation of this process may be from the employer or the adjudicator when the worker is not considered totally disabled from employment. Similarly, the worker may indicate that he/she is interested and capable of returning to work in some capacity.

Consultation must take place between the employer, adjudicator, the attending physician and in some cases, the Board Medical Advisor. All parties must be informed of the exact nature and duties of the job being offered as this is an important step in the determination of the medical suitability of the worker undertaking the proposed job.

Policy provides that, within reasonable limits, the worker must agree to return to the selective employment opportunity. It may be appropriate for the worker to refuse work, but the reasons for refusal must be related to the worker's ability to perform the job. Also, the job must constitute "meaningful work." The refusal cannot be based on extraneous considerations or simple unwillingness to return to employment. Issues of this nature must be clearly documented as they form the basis for appealable decisions.

This memo and the attached adjudicative guidelines indicate the Board's renewed focus on early return to work. These guidelines balance the needs of the employers to have a productive, experienced work force back on the job as soon as possible and the injured worker's rights to appropriate medical treatment and to compensation.

ADJUDICATIVE GUIDELINES FOR TIMELY MODIFIED RETURN TO WORK PROGRAMS

The adjudicator will make a decision on the suitability of an employer's offer of modified duties by following the process described below. These claims should be handled on a priority basis and a decision should be rendered in a maximum of 5 working days.

1. After discussion with a Claims Adjudicator (which may be initiated by the employer or a Board officer) the employer will propose a suitable job (or jobs) to the worker and to the Claims Adjudicator. The employer's proposal will describe the duties and physical requirements of the proposed job.
2. The Claims Adjudicator will contact the worker and discuss the proposed job. If the worker disagrees that the job is suitable, the Claims Adjudicator will ask the worker to explain whether the worker's understanding of the job duties differs from that of the employer or whether the worker agrees with the employer's description of the job duties, but the worker believes the job is unsuitable.
3. The Claims Adjudicator will compare any differences in the description of job duties and carry out an on-site investigation if necessary. The Claims Adjudicator will then make findings regarding the physical requirements of the job, and will communicate those findings to the worker and to the employer.
4. If the worker still disagrees that the job is suitable, the Claims Adjudicator will obtain medical evidence from the worker's attending physician and, if necessary, from a Board Medical Advisor, regarding the suitability of the proposed job from a medical or clinical perspective. The Claims Adjudicator will make findings regarding the suitability of the proposed job and will communicate those findings to the employer and to the worker. The Claims Adjudicator will outline the capabilities of the worker to the extent necessary to facilitate a return to suitable employment so that the employer can properly accommodate the worker within the work place.
5. If the job is suitable, the Claims Adjudicator will write a decision letter which states that the worker can return to suitable employment immediately, as per paragraph 34.11. The Claims Adjudicator will inform the worker of the consequences of failure to return to suitable employment.
6. If the Claims Adjudicator finds that the job is not suitable, the Claims Adjudicator will write a decision letter to both worker and employer stating what physical requirements are beyond the worker's capability.
7. If the Claims Adjudicator concludes that the proposed job is not suitable, the employer may propose a different job. In that case, the Claims Adjudicator will repeat steps 1 - 6.

The Claims Adjudicator may, at any time, obtain such evidence as may appear necessary. However, the decision regarding the suitability of employment is that of the adjudicator, not

that of a doctor or rehabilitation consultant. It is important therefore that the Claims Adjudicator has a complete physical description of the job and sound medical evidence regarding the physical and psychological restrictions of the worker.