

Practice Directive #44

Overview of Changes to Permanent Disability Benefits

Date: July 16, 2002

BACKGROUND

Effective June 30, 2002, the *Workers Compensation Act* (“Act”) was amended by Bill 49, the *Workers Compensation Amendment Act, 2002*. As a result, the Panel of Administrators approved amendments to the Board’s policies concerning permanent partial disability awards.

A. OVERVIEW OF CHANGES

1. PERMANENT PARTIAL DISABILITY AWARDS – SECTION 23(1)

In all cases, where a permanent partial disability results from a work injury, a worker’s entitlement to a permanent partial disability award must be assessed using the section 23(1) method of assessment. Under the new legislation, section 23(1) is a mandatory provision that sets out the rule the Board follows in determining a worker’s impairment of earning capacity. Other than in exceptional cases, section 23(1) awards are considered to appropriately reflect a worker’s presumed loss of earning capacity resulting from the permanent disability.

Benefits paid under section 23(1) continue until the worker reaches age 65, or longer if the Board is satisfied that the worker would have retired after age 65. See Practice Directive #41, *Duration of Benefits*, for further guidance.

2. PERMANENT PARTIAL DISABILITY AWARDS – SECTION 23(3)

Section 23(3) is a discretionary provision that establishes rules for compensating a worker for a permanent disability where a circumstance, defined in the legislation, is so exceptional that it warrants consideration under Section 23(3). Section 23(3) is only applied where the test set out under 23(3) and (3.1) is met. The test requires that the Board determine whether the combined effect of a worker’s occupation at the time of injury and a worker’s disability resulting from the injury is so exceptional that an amount determined under section 23(1) does not appropriately compensate the worker for the injury.

3. INTEGRATION OF CPP DISABILITY BENEFITS

The Board must deduct, from the disability benefit, an amount equal to 50% of any CPP disability benefit that the worker is paid for the compensable condition, subject to statutory minimum rules.

4. RETIREMENT BENEFITS

In those cases where a worker is entitled to a permanent disability award, the Board will also set aside an amount equal to 5% of a worker's permanent disability periodic payment toward his or her retirement benefit. The worker may also contribute a portion of his or her permanent disability award to the amount set aside by the Board. The worker must indicate an amount that is not less than 1% and not greater than 5% of his or her permanent disability periodic payments that is to be set aside toward the retirement benefit. At retirement age, the permanent disability award ceases and the retirement benefit is paid out as a lump sum along with accrued interest.

Further details are available in Chapter 6 of the RSCM and in the Practice Directives that follow.