

## CHAPTER 6

### PERMANENT DISABILITY AWARDS

#### #36.00 INTRODUCTION

Permanent disability awards are made when a worker fails to completely recover from a work-related injury or occupational disease, but is left with a permanent residual disability. They commence at the point when the worker's temporary disability under the claim ceases and the condition stabilizes. They may be total (section 22) or partial (section 23).

Permanent disability awards are calculated on the basis of a worker's long term "average net earnings". The computation of long term average net earnings is dealt with in Chapter 9.

#### #36.10 Transitional Provisions for Permanent Disability Awards (see Chapter 1, policy item #1.03)

#### #36.20 Canada Pension Plan Disability Benefits

Section 34(2) of the *Act* provides:

Subject to sections 7(4.1), 22(2) and 23(4), the Board must deduct, from the amount of a periodic payment of compensation paid to a worker under section 22(1) or 23(1) or (3) for an injury, an amount equal to 50% of any disability benefit that the worker is paid in respect of the injury under the *Canada Pension Plan*.

The Board deducts applicable Canada Pension Plan ("CPP") disability benefits from a worker's permanent disability award where the injury occurs on or after June 30, 2002. Where a worker was injured before June 30, 2002 and the permanent disability first occurred on or after June 30, 2002, CPP disability benefits paid to the worker for the same injury will not be deducted from the worker's permanent disability award.

Where a worker is paid CPP disability benefits for his or her dependent children, the Board does not deduct CPP disability child benefits from the worker's permanent disability award.

### **#36.21**      *Confirmation of CPP Disability Payments*

The Board will advise a worker of the legislative requirement that CPP disability benefits be deducted from the worker's permanent disability award. To ensure that only the portion of CPP disability benefits related to the injury is deducted from a worker's permanent disability award, the Board needs information from Human Resources and Skills Development Canada confirming that the worker is receiving CPP disability benefits, the effective dates (start and end dates), the medical condition(s) for which CPP disability benefits are being paid and benefit amount. Workers are responsible for providing CPP information to the Board.

The worker's obligation to provide information to the Board to administer the claim is discussed in policy item #93.26.

The Board will also advise a worker of the obligation to provide necessary CPP information and the consequences of failing to comply. If a worker fails to provide the necessary CPP information, the Board may reduce or suspend the worker's permanent disability periodic payments as discussed in policy item #93.26.

**EFFECTIVE DATE:**            June 1, 2009 – Update references to Human Resources and Skills Development Canada.

**APPLICATION:**                Applies on or after June 1, 2009

### **#36.22**      *Determination of the Amount of a CPP Disability Benefit that is Attributed to the Compensable Work Injury*

CPP disability benefit entitlement is based on total disablement which may encompass a work injury, other disabling conditions or a combination of both.

When a worker is disabled because of the work injury and there is evidence that leads the Board to determine that the disability benefits being issued under CPP are only related to the injury, 50% of the entire CPP disability benefits paid to the worker will be deducted from the worker's permanent disability award payable by the Board.

Where a worker is disabled because of the work injury and it is unclear what amount of CPP disability benefits is attributable to the compensable work injury, the amount of the CPP disability benefits attributable to the compensable work injury is determined as follows:

- Where the permanent disability award is calculated under the section 23(1) method of assessment, the amount of the CPP disability benefits attributable to the injury is determined by using the same proportion to the total CPP disability benefits as the worker's assessed percentage

of disability using the section 23(1) method. The Board deducts 50% of the calculated amount from the worker's permanent disability award.

- Where the permanent disability award is calculated under the section 23(3) method of assessment, the amount of the CPP disability benefits attributable to the injury is determined by using the same proportion to the total CPP disability benefits as the worker's estimated loss of earnings bears to the worker's average net earnings. The Board deducts 50% of the calculated amount from the worker's permanent disability award.

Where a worker is disabled because of the work injury and there is evidence that leads the Board to determine that the disability benefits being issued under CPP are not related to the injury, the Board will not deduct CPP disability benefits from the worker's permanent disability award.

**EFFECTIVE DATE:** August 1, 2003

**APPLICATION:** To all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003.

### **#36.23**      *Deduction of Lump Sum Payments of CPP Disability Benefits*

Where the Board determines a worker's permanent disability award entitlement and the worker is later advised that he or she is entitled to CPP disability benefits and is paid a lump sum amount under the CPP, the Board will deduct 50% of the applicable CPP disability benefits paid to the worker from future benefit entitlement. The Board will, as far as possible, do this in a manner which causes the least hardship to the worker. Normally, the Board will recover the amount owing by installments.

### **#36.24**      *Deduction of CPP Disability Benefits in Cases of Minimum Compensation*

A statutory minimum amount of compensation applies to a permanent disability award paid to a worker. CPP disability benefits will be deducted until the resulting permanent disability award amount falls to the statutory minimum.

If the permanent disability award is at or below the statutory minimum, the Board will not deduct CPP disability benefits.

## **#37.00 PERMANENT TOTAL DISABILITY**

Section 22(1) of the *Act* provides:

Subject to sections 34 and 35, if a permanent total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment that equals 90% of the worker's average net earnings.

Some examples of permanent total disability are paraplegia, quadriplegia, hemiplegia, and total or near total blindness. Combinations of permanent partial disabilities can also become permanent total disabilities, such as bilateral amputations of arms and legs.

Permanent total disability periodic payments continue until a worker reaches age 65, or later if the Board is satisfied that the worker would have worked past age 65. (Policy item #41.00)

On reaching retirement age, a worker who has received a permanent disability award is entitled to a retirement benefit (policy item #116.00). Permanently totally disabled workers are also entitled to rehabilitation and health care services and personal supports after reaching retirement age (policy item #116.30). Board policies on the retirement benefit are contained in Chapter 18 of the *RS&CM*.

**EFFECTIVE DATE:** August 1, 2003  
**APPLICATION:** To all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003.

### **#37.10 Commencement of Permanent Total Disability Payments**

Awards for permanent total disability are granted as soon as the medical evidence confirms that the worker is permanently totally disabled as a result of the work injury or occupational disease.

However, it may be necessary to make these payments at a provisional rate pending clarification of the worker's pre-injury earnings. (1)

Following the calculation of a worker's permanent total disability award, the Board must deduct from a worker's periodic payment an amount equal to 50% of any Canada Pension Plan (CPP) disability benefit that the worker is paid in respect of the work injury. The required CPP disability benefit deduction is subject to the Board's statutory minimum (policy items #36.20 to #36.24).

## **#37.20 Minimum Amount of Compensation**

Section 22(2) provides that the compensation awarded for permanent total disability cannot be less per month than the minimum set out below. This minimum is subject to cost of living adjustments as described (policy item #51.20).

			\$ Minimum
January 1, 2011	—	December 31, 2011	1,577.63
January 1, 2012	—	December 31, 2012	1,623.32

If required, earlier figures may be obtained by contacting the Board.

### **#37.21 Statutory Minimum Application**

The statutory minimum only applies in cases where a worker is found to be 100% disabled under the section 23(1) method of permanent disability assessment. It does not apply when the percentage of disability is less than 100% but the worker is found to be totally unemployable under the section 23(3) method of permanent disability assessment. (2)

## **#37.30 Reopening Claims**

Where a claim involving a permanent total disability is reopened, no payments of wage loss can be made. Wage loss may, however, be payable where a worker receiving a permanent total disability award of less than the current maximum suffers a new injury at work. The amount payable would be the difference between the periodic payment being paid on the old claim and 90% of the long term average net earnings on the new claim, limited by the current maximum.

## **#38.00 COMPENSATION FOR PERMANENT PARTIAL DISABILITY**

Section 23 of the *Act* pertains to the determination of a worker's entitlement to compensation for a permanent partial disability award. An award granted under section 23 compensates a worker for permanent partial disability that results from a work injury. Section 23(1) is the mandatory provision that must be applied in the assessment of permanent partial disabilities. Only in exceptional circumstances will an assessment be done under section 23(3).

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 calculated using the method set out in section 23(1) of the *Act*. In determining the

compensation payable under 23(1), the Board may be guided by section 23(2), which permits the use of a schedule of percentages of impairment of earning capacity for specified injuries or mutilations.

In all but exceptional cases, the effect of the disability on a worker will be appropriately compensated under section 23(1).

Only in exceptional cases will section 23(1) not be the method of assessment used to determine a worker's entitlement to a permanent partial disability award. In these cases the Board considers whether the combined effect of a worker's occupation at the time of injury and the disability resulting from the injury is so exceptional, that the section 23(1) method does not appropriately compensate the worker for the injury. In these exceptional cases, the Board has the discretion to assess a worker's entitlement to a permanent partial disability award under section 23(3) of the *Act*.

### **#39.00 SECTION 23(1) ASSESSMENT**

Section 23(1) of the *Act* provides:

Subject to subsections (3) to (3.2) and sections 34 and 35, if a permanent partial disability results from a worker's injury, the Board *must*

- (a) estimate the impairment of earning capacity from the nature and degree of the injury, and
- (b) pay the worker compensation that is a periodic payment that equals 90% of the Board's estimate of the loss of average net earnings resulting from the impairment.

(emphasis added)

In all cases where a permanent partial disability results from a worker's injury, the Board must assess the worker's entitlement to a permanent partial disability award under section 23(1) of the *Act*. Section 23(1) is a mandatory legislative provision which sets out the rule the Board follows in determining a worker's impairment of earnings capacity resulting from a work injury.

The percentage of disability determined for the worker's condition under section 23(1)(a), reflects the extent to which a particular injury is likely to impair a worker's ability to earn in the future.

A permanent partial disability award calculated under section 23(1) also reflects such factors as:

- short term fluctuations in the compensable condition;
- reduced prospects of promotion;
- restrictions in future employment;
- reduced capacity to compete in the labour market; and
- variations in the labour market.

In assessing a worker's entitlement to a permanent partial disability award under section 23(1), the Board may make reference to section 23(2) of the *Act*. Section 23(2) of the *Act* provides

The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations which may be used as a guide in determining the compensation payable in permanent disability cases.

Once the percentage of disability is determined, it is applied to the worker's long term average net earnings, and the permanent partial disability award is 90% of the amount so determined. The permanent partial disability award is granted following the determination of a worker's entitlement under section 23(1) of the *Act*.

Under the section 23(1) method of permanent partial disability assessment, a worker's percentage of disability is expressed as a percentage of total disability, with one hundred percent (100%) being the maximum possible rating for a totally disabled worker. A worker's percentage of permanent partial disability is based on the whole person. A worker, therefore, cannot be more than 100% disabled as a result of a work injury or combination of injuries.

### *#39.01 Decision-Making Procedure under Section 23(1)*

Section 23(1) assessments are undertaken once a worker reaches medical plateau.

The Board is responsible for ensuring that the necessary examinations and other investigations are carried out with respect to the assessment and making a decision on a worker's entitlement to a permanent partial disability award.

Section 23(1) evaluations may be conducted by the Board or a Board authorized External Service Provider. The Board sets protocols and procedures for these evaluations. The Board determines whether the evaluation will be referred to an

External Service Provider based on the nature of the injury and other relevant criteria as set out in the protocols. The Board may determine the worker's section 23(1) entitlement without a medical examination, if there is sufficient medical information on file to complete the assessment.

The determination of whether there is a permanent psychological impairment, and the severity of the impairment, is made by either the Board or a Board authorized External Service Provider. Once this evaluation is completed, the claim is referred to the Psychological Disability Committee to assess the percentage of disability resulting from the permanent psychological impairment.

The Board assesses any percentage of disability for physical impairment and, in conjunction with the Committee's percentage of psychological disability, determines the worker's permanent disability award under the section 23(1) method.

**EFFECTIVE DATE:** June 1, 2009 – Remove references to Board officer, Rehabilitation and Compensation Services Division, Disability Awards Medical Advisor and Board authorized External Service Provider.

**HISTORY:** August 1, 2003 – housekeeping changes.

**APPLICATION:** Applies on or after June 1, 2009.

### **#39.02**      *Chronic Pain*

This policy sets out guidelines for the assessment of section 23(1) awards for workers who experience disproportionate disabling chronic pain as a compensable consequence of a physical or psychological work injury.

#### 1.      Definitions:

Chronic pain is defined as pain that persists six months after an injury and beyond the usual recovery time of a comparable injury.

The Board distinguishes between two types of chronic pain symptoms:

Specific chronic pain - pain with clear medical causation or reason, such as pain that is associated with a permanent partial or total physical or psychological disability.

Non-specific chronic pain - pain that exists without clear medical causation or reason. Non-specific pain is pain that continues following the recovery of a work injury.

## 2. Multidisciplinary Assessment:

Where a worker has been referred for a permanent partial disability assessment under section 23(1) for chronic pain, the Board may refer the worker for a multidisciplinary assessment. (See Item C3-22.20, *Compensable Consequences - Pain and Chronic Pain*)

A multidisciplinary assessment may involve consideration of the worker's medical history, health status, the impact of the pain on the worker's physical functioning, psychological state, behaviour, ability to perform the pre-injury occupation and ability to perform activities of daily living. (See Item C3-22.20, *Compensable Consequences - Pain and Chronic Pain*)

Based on the various assessments, the evaluation will provide the Board with information on whether the worker is experiencing persistent chronic pain as a result of a work injury or disease and the extent of the chronic pain. The evaluation will also provide information on the consistency of the worker's pain presentations.

## 3. Evidence Considered in a Chronic Pain Section 23(1) Assessment:

In making a determination under section 23(1), the Board will enquire carefully into all of the circumstances of a worker's chronic pain resulting from a compensable injury or disease.

The evidence that the Board may consider in a section 23(1) assessment for chronic pain includes the following:

- i) The findings of any multidisciplinary assessments.
- ii) Information provided by the worker's attending physician as well as any other relevant medical information on the claim.
- iii) The worker's own statements regarding the nature and extent of the pain.
- iv) The worker's conduct and activities and whether they are consistent with the pain complaints.
- v) In cases of specific chronic pain, the Board will consider the extent of the associated physical or psychological permanent impairment and whether the specific chronic pain is in keeping with the particular permanent impairment.

The evidence that is relied upon to support the assessment of a section 23(1) award must be fully documented.

#### 4. Entitlement to a Section 23(1) Assessment:

Entitlement to a section 23(1) award for chronic pain may only be considered after all appropriate medical treatment and rehabilitation interventions have been concluded.

##### (a) Specific Chronic Pain – Consistent with the Impairment

Where a worker has specific chronic pain that is consistent with the associated compensable physical or psychological permanent impairment, the section 23(1) award will be considered to appropriately compensate the worker for the impact of the chronic pain. Pain is considered to be consistent with the associated compensable impairment where the pain is limited to the area of the impairment, or medical evidence indicates that the pain is an anticipated consequence of the physical or psychological impairment. In these cases, an additional award for the specific chronic pain will not be provided, as it would result in the worker being compensated twice for the impact of the pain.

##### (b) Specific and Non-Specific Chronic Pain – Disproportionate to the Impairment

A worker's entitlement to a section 23(1) award for chronic pain will be considered in the following cases:

- i) Where a worker experiences specific chronic pain that is disproportionate to the associated objective physical or psychological impairment.

Pain is considered to be disproportionate where it is generalized rather than limited to the area of the impairment or the extent of the pain is greater than that expected from the impairment.

In these cases, a separate section 23(1) award for chronic pain may be considered in addition to the award for objective permanent impairment.

- ii) Where a worker experiences disproportionate non-specific chronic pain as a compensable consequence of a work injury or disease.

Disproportionate pain, for the purposes of this policy, is pain that is significantly greater than what would be reasonably expected given the type and nature of injury or disease.

Where the Board determines that a worker is entitled to a section 23(1) award for chronic pain in the above noted situations, an award equal to 2.5% of total disability will be granted to the worker.

**EFFECTIVE DATE:** June 1, 2009 – Delete references to Board officers.  
**HISTORY:** January 1, 2003 – Amendments set out guidelines for the assessment of section 23(1) awards for workers who experience disproportionate disabling chronic pain as a compensable consequence of a physical or psychological work injury. Amendments apply to new claims received and all active claims that are currently awaiting an initial adjudication on or after January 1, 2003.  
**APPLICATION:** Applies on or after June 1, 2009

### **#39.10 Permanent Disability Evaluation Schedule**

Section 23(1) awards may be made with reference to the *Permanent Disability Evaluation Schedule* (“*Schedule*”), which is set out in Appendix 4. This is a rating schedule of percentages of disability for specific injuries or mutilations. (3)

The *Schedule* is a set of guide-rules, not a set of fixed rules. The Board is free to apply other variables in arriving at a final award; but the “other variables” referred to means other variables relating to the degree of physical or psychological impairment, not other variables relating to social or economic factors, nor rules (including schedules and guide-rules) established in other jurisdictions. In particular, the actual or projected loss of earnings of a worker because of the disability is not a variable which can be considered. (4)

In cases where the specific impairment is not covered by the *Schedule*, but the part of the body in question is covered, the Board must first determine the percentage loss of function in the damaged area. This determination is based on the findings of the section 23(1) evaluation and other medical and non-medical evidence available. The final award is arrived at by taking this percentage of the percentage allocated in the *Schedule* to the disabled part of the body. Because the *Schedule* is used in the calculation, this type of award is still considered as a scheduled one. For example, the amputation of an arm down to the proximal third of the humerus or its disarticulation at the shoulder is scheduled at 70% of total disability. Suppose a worker suffers a severe crush injury to the arm which culminates in a permanent loss of half its function. The final assessment would be 50% of 70%, i.e. 35% of total disability.

**EFFECTIVE DATE:** June 1, 2009 – Delete references to Board officers.  
**HISTORY:** August 1, 2003 – Deletion of statements regarding revisions to the *Schedule* and housekeeping changes.  
**APPLICATION:** Applies on or after June 1, 2009

### *#39.11 Age Adaptability Factor*

The percentage rate derived by use of the schedule is modified by the application of an age variable. This age adaptability factor is used for workers over the age of 45 where the disability is calculated in accordance with the Schedule. The disability is increased by 1% of the assessed disability for each year over 45 up to a maximum of 20% of the assessed disability.

Example:

Award effective at age 55

Scheduled disability 50% of total disability

Age adaptability factor 10% of 50% = 5% of total disability

Disability assessed at 55% of total disability

The worker's age at the effective date of the disability award is used, not his or her age at the time of the injury.

The age adaptability factor is not applied to non-scheduled awards. However, the worker's age is one of the overall considerations in making the judgement.

### *#39.12 Enhancement*

Where a worker has an additional disability which pre-existed the injury or the injury causes more than one disability, the Board, in certain situations, increases the overall percentage of disability that would otherwise be awarded. This is known as the "enhancement factor".

Enhancement is only applied to scheduled awards. An enhancement factor is not applied to non-scheduled awards, such as chronic pain.

The Board applies enhancement in the following limited situations:

#### 1. Arms

An enhancement factor is applied to disabilities on opposite sides of the body involving both arms. For example, a right wrist and a left wrist, or a left shoulder and a right elbow, etc. An enhancement factor of 50% of the lesser arm disability is added to the total of the percentages awarded for each separate arm disability.

## 2. Legs

An enhancement factor is applied to disabilities on opposite sides of the body involving both legs. For example, a right ankle and a left ankle, or a right ankle and a left knee, etc. An enhancement factor of 50% of the lesser leg disability is added to the total of the percentages awarded for each separate leg disability.

## 3. Assisted Ambulation

An enhancement factor is applied to disabilities in different parts of the body that permanently impede the worker from using required devices for assisted ambulation (e.g. a cane, walker or wheel chair). For example, disability to a right wrist and a left ankle in combination may impede the use of a cane. An enhancement factor of 50% of the lesser disability is added to the total of the percentages awarded for each separate disability.

## 4. Spine

Prior to October 27, 1977, the Board did not normally permit an enhancement factor in respect of spinal column disabilities. However, subsequent to that date, the Board has concluded that such a factor may be added for combinations of disabilities when one of those disabilities involves the spinal column and that disability is shown to have been enhanced by another limb disability. An enhancement factor is not applied to two or more disabilities of the spinal column in combination. A factor of 50% of the disability attributed to the spine is added. Therefore, if the disability in the back is 10%, and the sum of the other disabilities is 16%, the enhancement factor is 5% and the total disability awarded 31%. This has not been retroactively applied to awards made prior to October 27, 1977.

## 5. Thumb and One or More Fingers

An enhancement factor is applied to disabilities involving the thumb and one or more fingers.

### (a) Multiple Digit Amputations:

Where a thumb and one or more fingers is amputated, the percentage of disability of the thumb is determined and the percentage of the disability for the finger or fingers is determined. Normally, an enhancement factor of 100% of the lesser of these disabilities is then added.

### (b) Restriction of Movement:

Where a finger and a thumb are affected, hand chart 1 and 2 of the *Schedule* are used. An enhancement factor of 100% of the lesser of these two disabilities is then added. Where the thumb and multiple fingers are affected, hand charts 3 to 5 are used and an enhancement factor of 100% of the lesser of the disabilities is then added.

## 6. Eyes

The enhancement factor with respect to eyes is dealt with in policy item #39.42, *Visual Acuity*.

- EFFECTIVE DATE:** January 1, 2011
- CROSS REFERENCES:** Policy item #39.21, *Amputation of Digits of the Hand*;  
Policy item #39.31, *Finger Restrictions*;  
Policy item #39.32, *Thumb Restrictions*;  
Policy item #39.42, *Visual Acuity*.
- HISTORY:** January 1, 2011 – Policy amended to clarify that enhancement applies to multiple disabilities in both arms, or both legs, and to disabilities that impede required assisted ambulation. Policy amended to clarify that enhancement only applies to scheduled awards. Policy reorganized to consolidate policies that reference enhancement.  
June 1, 2009 – Delete reference to Board officer.  
August 1, 2003 – Amendments to insert a statement regarding the application of an enhancement factor in respect of spinal column disabilities and housekeeping changes.
- APPLICATION:** Applies to all decisions on or after January 1, 2011.

### #39.13 *Devaluation*

Where the sum of the scheduled percentages allocated to several disabilities in the same limb exceeds their actual combined effect, a downward adjustment is required. This is known as “devaluation”.

Multiple disabilities involving one limb cannot exceed the amputation value of that limb. As a result, disabilities of the arm cannot exceed 70% and disabilities of the leg cannot exceed 65%.

- EFFECTIVE DATE:** January 1, 2011
- HISTORY:** January 1, 2011 – Devaluation formula deleted.  
Policy amended to provide that multiple disabilities involving one limb cannot exceed the amputation value of that limb.
- APPLICATION:** Applies to all decisions on or after January 1, 2011.

### #39.20 **Amputations of Arms or Legs**

In assigning a rating level to any amputation, it must be assumed that the stump is structurally perfect, that it is well padded, that the scar is properly placed and that there is no undue tenderness on areas which are subject to pressure.

Uncorrectable defects such as scarring, tenderness, grafts, muscle wasting, nerve damage may warrant a rating level higher than the schedule. In the case of major limb amputations, rating levels assigned should have regard to the type and probable usefulness of the prosthesis to which they are adaptable. Amputations always involve scheduled awards.

Where a worker suffers a permanent disability to the dominant hand, the fact the worker is unaccustomed to using the other hand to the same extent does not affect the percentage of measured disability. It is usually a temporary handicap rather than a permanent problem. Whether the worker was left- or right-handed is, therefore, not a relevant factor in establishing an award for a permanent partial disability. It is, however, a factor that may sometimes be relevant in establishing temporary benefits, or in the provision of rehabilitation services. For example, it might be relevant in deciding exactly when the worker is fit to return to work, whether more exercise is needed, or whether retraining may be needed.

### **#39.21**      *Amputation of Digits of the Hand*

It is usually considered that there must be shortening of the bone before an award is granted for amputation of a digit of the hand.

The percentages of disability awarded in respect of an amputation of a digit of the hand are set out in hand charts 1 and 2 of the *Schedule*.

In considering the fingers and thumbs, if the amputation of the portion of the distal phalanx involves:

- (a) less than 1/4 of the phalanx, it is not normally considered significant enough to have any impact on future earning capacity.
- (b) partial amputation of the phalanx, it is considered in the following fractions: 1/4, 1/3, 1/2, 2/3, 3/4.
- (c) greater than 3/4 of the phalanx, it is considered as an amputation equivalent to the whole phalanx.

Multiple Digit Amputations:

Where more than one finger is amputated, hand charts 3, 4 and 5 are used and the enhancement factors for multiple finger disabilities are built into the *Schedule*.

**EFFECTIVE DATE:**            January 1, 2011  
**APPLICATION:**              Applies to all decisions on or after January 1, 2011.

### **#39.30      Restrictions of Movement in Arms or Legs**

Restrictions of movement in the joints of the body are measured and documented during the section 23(1) evaluation. The Board then applies the measurement to the appropriate item in the *Schedule*.

These awards are always scheduled.

**EFFECTIVE DATE:**            June 1, 2009 – Delete reference to Board officer.  
**HISTORY:**                    August 1, 2003 – housekeeping changes  
**APPLICATION:**             Applies on or after June 1, 2009

### **#39.31      *Finger Restrictions***

The formula used to compute a percentage value for restriction of finger movement is:

$$\frac{\text{Restriction Degrees}}{\text{Normal Degrees}} \times \frac{3}{4} \times \text{amputation value at the joint concerned}$$

This formula is used as it is normally considered that a fused finger joint is equal to 3/4 of the value of an amputation at the same level.

When more than one finger is involved, the appropriate multiple finger chart from the *Schedule* is used to determine the amputation value at the joint concerned, thus building in any enhancement factor.

**EFFECTIVE DATE:**            August 1, 2003  
**APPLICATION:**             To all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003.

### **#39.32      *Thumb Restrictions***

The basic principles set out in policy item #39.31 also apply here. The formula used to compute a percentage value for restriction of thumb movement is:

$$\frac{\text{Restriction Degrees}}{\text{Normal Degrees}} \times \frac{1}{2} \times \text{amputation value at the joint concerned}$$

This formula is used in that it is normally considered that a fused thumb joint is equal to 1/2 of the value of an amputation at the same level.

Where a finger and thumb are affected, hand charts 1 and 2 of the *Schedule* are used. Where the thumb and multiple fingers are affected, hand charts 3 to 5 are used.

**EFFECTIVE DATE:** January 1, 2011  
**APPLICATION:** Applies to all decisions on or after January 1, 2011.

### **#39.40      Sensory Losses**

Some sensory losses are specifically listed in the *Schedule*. Others, though not specifically referred to, may be assessed on a judgment basis as part of the overall disability incurred in a part of the body covered in the schedule.

The complete loss of the major nerves in the arms and legs is covered in items 38 to 41 of the *Schedule*. When the fingers lose sensitivity as the result of an injury, an award of up to the full amputated value of the joint can be granted. This especially relates to the thumb, index and middle fingers, when the pinch grip is involved.

**EFFECTIVE DATE:** August 1, 2003  
**APPLICATION:** To all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003.

### **#39.41      Loss of Taste and/or Smell**

Although there is not a scheduled award for the loss of either or both of these senses, the Board's policy is to allow 3% for a loss of smell. This includes the partial loss of taste, which always in practice accompanies a complete loss of smell. A loss of taste alone is regarded as a non-scheduled award.

If the loss of sense of taste or smell results from an occupational disease, the requirements of section 6 must be met before an award can be granted, including the requirement that there be a disablement from earning full wages. (5)

### **#39.42      Visual Acuity**

For permanent disability award purposes, loss of visual acuity should be measured both before and, if correction is possible, after correction with conventional lenses. The intent of this evaluation is to determine the nature and degree of the injury.

Section 23(1) of the *Act* provides compensation based on the existence of a permanent partial "disability". The degree of disability is the extent to which the injury is presumed to impair the earning capacity of the average worker. In determining the degree of disability for the purposes of calculating an award under section 23(1), measurement of the loss of visual acuity is usually based on the best vision obtainable after correction with conventional lenses. Effective application of corrective lenses should eliminate any impairment of earning capacity.

The Permanent Disability Evaluation Schedule, items 49 to 55, sets out the percentages of disability payable for loss of visual acuity. These values have been developed based on corrected vision in order to establish an accurate measure of disability.

As total blindness in one eye is assessed at 16% of total and total blindness in two eyes is equal to 100% of total disability, the value attached to the total loss of the second eye is 84%. When assessing a bilateral visual loss which is less than total, each eye is first assessed separately in accordance with the schedule. 84/16 times the percentage applied to the better eye is then added to the percentage applied to the poorer eye.

Where the work injury leaves the worker with an aphakic eye, an award of 12% of total is made. This award is on the assumption that the worker has 20/20 vision. If the vision is worse, the worker receives an additional award equal to the percentage allocated in the schedule to the loss of visual acuity, but this additional award is devalued according to the rules set out in policy item #39.13. If, for example, a worker with an aphakic eye has 20/60 vision the percentage is calculated as follows:

A.	Percentage for blind eye	16%
B.	Percentage for aphakic eye	12%
C.	Percentage for loss of visual acuity equal to 20/60 (Item 87 in schedule)	4%
D.	Additional percentage awarded where B combined with C $\frac{4\%(C)}{16\% (A) \times [16\% (A) - 12\% (B)]}$	1%
E.	Total percentage awarded [(B) + (D)]	13%

The above formula would also apply in other situations where a compensable eye disease is combined with a loss of visual acuity.

### **#39.43**      *Sexual and Reproductive Function*

Sexual function is defined as the ability to engage in sexual activity. It must be distinguished from reproductive function, which is defined as the ability to procreate.

Cases involving sexual or reproductive function are classified as follows:

1. Impaired sexual or reproductive function resulting from paraplegia, quadriplegia, or similar disabilities.

In these cases, the worker is generally receiving an award for total disability, and where that is so, there is no scope for considering impaired sexual or reproductive function as a separate compensable item.

2. Where a physical injury other than to the genital organs or their related structures results in a psychological disturbance, and impaired sexual function is a symptom or consequence of the psychological disorder. In this situation, the psychological problem, including the impaired sexual function, should be considered according to the principles applicable to psychological problems, and the impaired sexual function should not be considered as a separate matter. In cases of this kind, it is normal to explore the possibilities of treatment before regarding the case as one for a permanent disability award.

3. Where a compensable injury or occupational disease has caused permanent damage to the genital organs or related structures resulting in impaired sexual or reproductive function.

The reference here is to cases where the remedial treatment has been considered and found not to be possible. Where impaired sexual or reproductive function in this category occurs, a permanent disability award will be given. The *American Medical Association Guide to the Evaluation of Permanent Impairment* will be used to assist in determining the appropriate percentage of disability.

A worker with impaired sexual or reproductive function derived from physical damage to the sexual or reproductive organs or related structures may suffer actual psychological symptoms over and above what might normally be assumed for impaired sexual or reproductive function. In such a case, it will not be appropriate to simply grant an award which is based on the ordinary assumed psychological effect. An assessment of the actual psychological disability suffered by the worker should be carried out in accordance with the general policy for assessing such disabilities under section 23(1) of the *Act*. If, after that assessment, it is found that the worker is entitled to a general psychological award of an amount higher than what might normally be awarded for impaired sexual or reproductive function, the worker will be paid this award in lieu of the award for impaired sexual or reproductive function.

### #39.44 Assessment of Awards for Hand-Arm Vibration Syndrome

To measure the extent of any permanent disability resulting from Hand-Arm Vibration Syndrome, the evaluation is carried out in the following manner:

1. The Board assesses the vascular, sensorineural and musculoskeletal impairments of the worker in reference to the following table

Elements	Process (Assess each hand separately)	Points Applied
<i>Vascular Element:</i>	Assess vascular elements: blanching of fingers in cold temperature, pain, swelling, ulcers, gangrene & amputations: <ul style="list-style-type: none"> <li>• Distal phalange on index, middle and ring finger = 1 point each</li> <li>• Middle phalange on index, middle and ring finger = 1 point each</li> <li>• Proximal phalange on index, middle and ring finger = 2 points each</li> <li>• All phalanges on little finger = 1 point</li> <li>• All phalanges on thumb finger = 1 point</li> <li>• Distal half of palm (top) = 1 to 2 points</li> <li>• Proximal half of palm (bottom) = 1 point</li> </ul>	17 points max per hand
	ADD: Double value of sum of above if there is evidence of trophic changes (i.e., ulcers)	17 points max per hand
	MAXIMUM points for Vascular element	34 points per hand
<i>Sensorineural Element:</i>	Assess sensorineural impairment (evidence of numbness, tingling and reduced sensory perception)	2 points max per hand
	Assess manual dexterity (i.e., difficulty with buttons and writing) <ul style="list-style-type: none"> <li>• Additional 1 to 2 points per hand if reduction occurs</li> </ul>	2 points max per hand

	MAXIMUM points for sensorineural element	4 points per hand
<i>Musculoskeletal Element:</i>	Assess musculoskeletal impairment (loss of grip strength)	2 points max per hand
	MAXIMUM points from vascular, sensorineural and musculoskeletal elements for each hand	40 points per hand
	Add total points for both hands.	

2. The Board assesses the worker's disability using the assessment of impairment and the following table.

Conversion of Points to Percentages of Disability

Points System	% Disability	Points System	% Disability	Points System	% Disability
1 – 4	1	21 – 30	6	Beyond 40	Maximum of 20
5 - 15	2	31 – 35	8		
16 - 20	4	36 – 40	10		

**EFFECTIVE DATE:** June 1, 2009 – Delete reference to Board officer.  
**HISTORY:** November 19, 2002 – Amendments to delete paragraphs 3 and 4 and housekeeping changes.  
**APPLICATION:** Applies on or after June 1, 2009.

**#39.50 Non-Scheduled Awards**

Any award where the *Schedule* is not directly or indirectly used in the assessment is a non-scheduled award. This covers impairments in all parts of the body not listed in the *Schedule*. Disabilities resulting from multiple injuries or occupational diseases may also involve non-scheduled awards. The rules governing respiratory and skin diseases are set out in policy item #29.00 and policy item #30.50 respectively.

In the case of non-scheduled awards, judgment is used to arrive at a percentage of disability appropriate to the particular claimant's impairment. Regard will be had to, inter alia, the section 23(1) evaluation, the circumstances of the claimant, medical opinions of Board or non-Board doctors, and to schedules used in other jurisdictions.

Neither the age adaptability or enhancement factors nor devaluation are formally applied in respect of non-scheduled awards. (The exception is that an enhancement factor may be added with respect to spinal injuries as outlined in policy item #39.12.) However, in making a judgment as to the correct percentage of disability, the Board will have regard to the age of the worker, to existing disabilities in other parts of the worker's body, or to the combined effect of more than one disability in the same part of the body.

**EFFECTIVE DATE:** June 1, 2009 – Delete references to Board officer.

**HISTORY:** August 1, 2003 – housekeeping changes.

**APPLICATION:** Applies on or after June 1, 2009

### **#39.60 Minimum Award**

The minimum compensation for permanent partial disabilities is calculated in the same manner as for temporary total disability but only to the extent of the partial disability. (6) Thus, for example, if a worker is injured on January 2, 1986, and suffers a residual disability assessed at 10% of total disability, the minimum compensation will be the lesser of 10% of \$197.25 or 10% of his average earnings prior to the injury.

The minimum for permanent total disability does not apply simply because a worker is found to be totally unemployable under section 23(3). (7)

### **#39.61 Injury Prior to March 18, 1943**

Notwithstanding any other provision of the *Act*, all periodic payments awarded as compensation for permanent partial disability to workers injured prior to March 18, 1943, who, on January 1, 1955, or after that are in receipt of those periodical payments are calculated or recalculated at a rate of sixty-six and two-thirds per cent of average earnings of not less than two thousand dollars nor more than two thousand five hundred dollars per annum. Compensation is not payable under this provision for any period prior to January 1, 1955. (8)

## **#39.62**      *Injury Prior to January 1, 1965*

In regard to payments made on or after January 1, 1965, permanent partial disability pensions awarded in respect of injuries occurring before that date were recalculated in accordance with the then minimum for permanent total disability but to the extent only of the partial disability. This minimum was an amount equal to \$30.00 per week (\$130.00 per month), unless the worker's average earnings were less, in which case compensation would be paid in an amount equal to the average earnings.

Any increase resulting from the above provisions did not apply to a commuted pension or the commuted portion of a pension.

In considering whether the worker's earnings were less than the minimum, the artificial wage created by the application of policy item #39.61 was not taken into account. Only the worker's actual earnings were relevant.

## **#40.00**      **SECTION 23(3) ASSESSMENT**

Section 23(3) of the *Act* provides:

Subject to sections 34 and 35, if

- (a) a permanent partial disability results from a worker's injury; and
- (b) the Board makes a determination under subsection (3.1) with respect to the worker;

the Board may pay the worker compensation that is a periodic payment that equals 90% of the difference between

- (c) the average net earnings of the worker before the injury, and
  - (d) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
    - (i) the average net earnings that the worker is earning after the injury;
    - (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.
- (3.1) A payment may be made under subsection (3) only if the Board determines that the combined effect of the worker's occupation at the time of injury and the worker's disability resulting from the injury is so exceptional that an amount determined under subsection (1) does not appropriately compensate the worker for the injury.

- (3.2) In making a determination under subsection (3.1), the Board must consider the ability of the worker to continue in the worker's occupation at the time of injury or to adapt to another suitable occupation.

Section 23(3) is a discretionary provision that establishes rules for compensating a worker for a permanent partial disability in exceptional circumstances. Section 23(3) is only applied where the test set out under section 23(3) and (3.1) is met.

This 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. Occupation is broadly defined as a collection of jobs or employments that are characterized by a similarity of skills.

For the purposes of determining whether the worker meets the test set out under section 23(3) and (3.1), the Board must consider the combined effect of a worker's occupation at the time of injury and the resulting disability. While a worker may experience a loss of earnings as a result of a work injury, that fact alone is not sufficient to meet the test set out under section 23(3) and (3.1).

The following is a list of criteria that must be considered under section 23(3) and (3.1). Each of these criteria must be satisfied in order for a worker to be assessed under section 23(3).

- The occupation at the time of injury requires specific skills which are essential to that occupation or to an occupation of a similar type or nature;
- As a result of the compensable disability, the worker is no longer able to perform the essential skills needed to continue in the occupation at the time of injury or in an occupation of a similar type or nature;
- The effect of the compensable disability is that the worker is unable to work in his or her occupation or in an occupation of a similar type or nature, or to adapt to another suitable occupation, without incurring a significant loss of earnings.

Skills are defined in this context as the learned application of knowledge and abilities.

In all cases, the Board must determine if, following recovery from a work injury, a worker is either able to return to the occupation at the time of injury or to adapt to another suitable occupation. This determination includes consideration of both the worker's transferable skills and the worker's post-injury functional abilities. In the vast majority of cases a worker's entitlement to a permanent partial disability

award is determined under the section 23(1) method and this estimate of impairment of earning capacity is considered to be appropriate compensation.

However, in exceptional cases, the amount determined under section 23(1) may not appropriately compensate a worker. In these cases, medical evidence confirms that the work injury makes it impossible for a worker to continue in the occupation at the time of injury or in an occupation of a similar type or nature. In addition, the worker is considered unable to adapt to another suitable occupation without incurring a significant loss of earnings due to the work injury.

For the purposes of this policy, a significant loss of earnings means the Board may conclude in these exceptional cases, that the loss of earnings a worker will experience as a result of the combined effect could not have been anticipated under the section 23(1) method of estimating a worker's long term loss of earning capacity.

An example of when the combined effect may be considered so exceptional is one where a work injury results in a significant disability of two digits on the dominant hand of a worker whose occupation requires fine motor skills. As a result of the disability, the worker is no longer able to perform fine motor skills, and consequently, is unable to continue in the pre-injury occupation, or another occupation of a similar type or nature. In addition, due to the disability, the worker is unable to adapt to another suitable occupation without incurring a significant loss of earnings.

As a result, the section 23(1) award may not be considered to appropriately compensate the worker for the impact of the combined effect, and may therefore result in a consideration under section 23(3).

#### **#40.01 Decision-Making Procedure under the Section 23(3) Method**

Section 23(3) assessments are undertaken if a permanent partial disability results from a worker's injury, and the Board makes a determination under subsection (3.1) with respect to the worker.

The Disability Awards Committee is ultimately responsible for the conclusion on permanent partial disability awards assessed under section 23(3) of the *Act*. The Board conducts the necessary investigations and make a specific recommendation to the Committee regarding a worker's eligibility for a section 23(3) assessment and, in cases where an assessment is undertaken, the worker's entitlement to an award.

It is the function of the Committee, following any further investigation it considers necessary, to agree or disagree with the recommendation. If the Committee agrees, the initial recommendation will be implemented. If the Committee disagrees with the recommendation, it will either implement its findings or direct further investigation.

The rules of evidence followed by the Board and the Disability Awards Committee are discussed in policy item #97.40.

A review by the Review Division may be requested regarding a worker's section 23(3) entitlement.

**EFFECTIVE DATE:** June 1, 2009 – Delete references to Board officer, Medical Services and the Disability Awards Committee.  
**HISTORY:** March 3, 2003 – Inclusion of reference to review.  
**APPLICATION:** Applies on or after June 1, 2009.

#### **#40.10 Section 23(3) Assessment Formula**

This assessment is undertaken in exceptional cases where the Board determines that a worker is eligible for an assessment under section 23(3) of the Act. The following guidelines apply in considering a worker under section 23(3):

1. Long term average net earnings that the worker is earning after the injury will be determined in accordance with established policies in Chapter 9.
2. In considering the amount that better represents the worker's loss of earnings after the injury, the Board will compare the average net earnings that the worker is actually earning after the injury, with the average net earnings the Board estimates the worker is capable of earning in a suitable occupation after the injury. This comparison requires an employability assessment.
3. In estimating what a worker is capable of earning after the injury, the Board gives regard to the evidence, including the medical evidence, of the limitations imposed by the compensable disability and the fitness of the worker for different occupations. The Board also gives regard to the evidence about the suitability of the worker for occupations that could reasonably become available. Following these considerations, the Board will arrive at a conclusion about suitable occupations that the worker could be expected to undertake over the long-term future.

4. Average net earnings that maximize the worker's long-term potential up to the worker's pre-injury wage rate, will be selected from the occupations that are suitable and reasonably available over the long-term. Earnings in those occupations will be determined as at the time of the injury.
5. The possible award will then be 90% of the average net amount by which the earnings level thus established is less than the average net earnings prior to the injury.
6. Any increase that may be due to the worker because of a cost of living adjustment will then be added.
7. Since the assessment under section 23(3) aims to predict the worker's actual loss of earnings over the future, no award can be made when the worker is unemployed for reasons unrelated to the injury and it is determined that there will not be a potential loss of earnings.

These guidelines are discussed further in policy items #40.12 to #40.14.

**EFFECTIVE DATE:** June 1, 2009 – Delete references to Board officer.  
**HISTORY:** November 1, 2002 – Amendments include the requirement of an employability assessment, and the limitation of "up to the worker's pre-injury wage rate".  
**APPLICATION:** Applies on or after June 1, 2009

#### **#40.12**     *Suitable Occupation*

An occupation differs from a "job" which is defined as a specific position with a particular employer. Occupation is a collection of jobs or employments that are characterized by a similarity of skills.

In estimating what a worker is capable of earning in a suitable occupation after the injury, the Board gives regard to the evidence, including the medical evidence of the limitations imposed by the compensable disability, and the ability of the worker to perform different occupations. Regard is also given to the suitability of the worker for occupations that could reasonably become available over the long run that will maximize the worker's long-term earnings potential, up to the pre-injury wage rate. In most cases, "long-term" refers to three to five years.

The Board assesses the worker's earning potential in light of transferable skills and all possible rehabilitation measures that may be of assistance, including the possibility of retraining or other measures that may be appropriate to the worker.

The guidelines set out below are followed in determining suitable and reasonably available occupations for a worker:

- If the worker has made all reasonable efforts to maximize his or her earnings, the job that the worker has actually obtained is generally accepted as being suitable, unless there is evidence that the job is transitory and jobs at another level of earnings within that occupation will be available to the worker in the near future.
- The occupation must, in practice, be reasonably available. The Board will, generally, only have regard to higher paying occupations which a person in the worker's present job would ordinarily be expected to obtain. It would not be fair to assume that a worker will receive all possible promotions that might theoretically be made available.
- The worker has the skills, education and functional abilities that the occupation requires.
- A reasonably available occupation must be one that the worker is medically fit to undertake, and that does not endanger the worker's recovery or the health and safety of the worker and/or others.
- Where a suitable occupation is reasonably available over the long term, it is taken into consideration even though it is not reasonably available at the time of assessment because of general economic conditions.
- In deciding whether it is reasonable for a worker to refuse a job, regard should be had to the long term as well as the immediate job. If jobs in an occupation are subject to fluctuations in the economy but a lower-paying job in another suitable occupation appears more stable in the long run, then the other job may be considered the best-paying job in the long run.
- A reasonably available job is usually within a reasonable commuting distance of the worker's home. (See policy C11-88.90, "Relocation".)
- If the worker declines the best-paying reasonably available job because of a personal preference for a lower-paying job or for an alternative life-style, the wage rate in the best-paying reasonably available job will be used in the formula.

**EFFECTIVE DATE:** June 1, 2009 – Delete references to Board officer.  
**HISTORY:** November 1, 2002 – Policy substantially revised.  
Clarifies guidelines to be followed in determining suitable and reasonably available occupations for a worker.  
**APPLICATION:** Applies on or after June 1, 2009

## #40.13 *Measurement of Earnings Loss*

Sections 23(3)(c) and (d) set out the process for determining a worker's entitlement to a permanent partial disability award under this method. These subsections provide that the Board may pay a worker compensation that is a periodic payment that equals 90% of the difference between the average net earnings before the injury, and either the average net earnings that the worker is earning, or that the Board estimates the worker is capable of earning, after the injury.

The latter figures are obtained by ascertaining the earnings in the occupations which have been found to be suitable and reasonably available according to the criteria set out in policy item #40.12 and determining the earnings figure which will maximize the worker's long-term earnings potential.

A worker's post-injury wage loss will be based on estimated earnings rather than on actual earnings in the following cases:

- The worker is employable but does not have a job; or
- The worker has a job but is not maximizing his or her earning capacity up to the pre-injury rate; or
- The worker has, for personal reasons, withdrawn from the workforce; or
- The worker fails to co-operate with the rehabilitation process.

The intention of the *Act* is to protect workers' earnings only up to the maximum wage rate. This is shown by section 33(3) which results in payments for total disability being limited to 90% of the maximum and by section 31 which ensures that, where a worker is already receiving payments for a disability, additional payments can be made for any further disability only to the extent that they do not take the total payments above the maximum. No award can be made under section 23(3) where, following the injury, the worker is earning or is able to earn at or above the maximum wage rate. Where a worker was earning at or above the maximum prior to the injury and it is projected that because of the injury earnings will be less than the maximum, a projected loss of earnings award can be made but only to the extent of the difference between the maximum and the projected earnings.

Although assessment of a permanent partial disability award will often be made some time after the original injury, it would not be fair to compare directly the actual pre-injury average earnings with the earnings the worker might now earn in the occupations available. The effect of inflation upon earnings levels would mean that the real loss would not be properly determined in that way. The practice of the Board is to use the earnings in the occupations available after the

injury as they stood at the date of the injury. It occasionally happens that earnings in occupations at the time of the injury are not available. If this occurs, it may be necessary to use the earnings in those occupations as they were at another date and bring the pre-injury earnings into line by applying cost of living adjustments as described in policy item #51.00.

When calculating a worker's average net earnings for the purposes of the section 23(3) assessment, the Board will also consider the formulas used to determine the CPP contributions, EI premiums and income taxes applicable to the level of average earnings. The formulas used are those in effect on the earlier of the first day after the date temporary disability benefits have been payable to the worker for a cumulative period of 10 weeks; or on the effective date of a worker's permanent disability award.

**EFFECTIVE DATE:** November 1, 2002  
**APPLICATION:** To decisions made on or after November 1, 2002 on claims adjudicated under the *Act*, as amended by the *Workers Compensation Amendment Act, 2002*.

#### **#40.14**      *Provision of Employability Assessments*

Workers are provided with a copy of a completed employability assessment before a decision is made on entitlement to a section 23(3) award. They have 30 days in which to provide a written submission. All such submissions received within this time frame will be considered before the final decision is made. Workers are also advised that, at their request, a copy will be made available to their treating physicians. If the details of the employability assessment and its impact on the section 23(3) award are known and agreed to, the 30-day waiting period may be waived.

#### **#40.32**      *Worsening or Improvement of Disability*

If the disability on which an award is based worsens, the extent of the disability is reassessed and a new award is made based on the reassessment. Conversely, if a worker should unexpectedly recover from a disability classified as permanent, the permanent disability award would be subject to termination or downward adjustment.

## **#41.00 DURATION OF PERMANENT DISABILITY PERIODIC PAYMENTS**

Section 23.1 of the *Act* provides:

Compensation payable under section 22(1), 23(1) or (3), 29(1) or 30(1) may be paid to a worker, only

- (a) if the worker is less than 63 years of age on the date of the injury, until the later of the following:
  - (i) the date the worker reaches 65 years of age;
  - (ii) if the Board is satisfied the worker would retire after reaching 65 years of age, the date the worker would retire, as determined by the Board, and
- (b) if the worker is 63 years of age or older on the date of injury, until the later of the following:
  - (i) 2 years after the date of injury;
  - (ii) if the Board is satisfied that the worker would retire after the date referred to in subparagraph (i), the date the worker would retire, as determined by the Board.

Section 23.1 of the *Act* recognizes age 65 as the standard retirement age for workers. Confirmation of age 65 as the standard retirement age may also be found in the contractual terms of some employer sponsored pension plans and collective agreements. As well, Statistics Canada information lends weight to the general view that, on average, workers retire at or before 65 years of age. (9)

Section 23.1 also permits the Board to continue to pay benefits where the Board is satisfied that the worker would retire after the age of 65 if the worker had not been injured.

The standard of proof under the *Act* is on a balance of probabilities as described in policy item #97.00, Evidence. However, as age 65 is considered to be the standard retirement age, the Board requires evidence that is verified by an independent source to confirm the worker's subjective statement regarding his or her intent to work past age 65. Evidence is also required so that the Board can establish the worker's new retirement date for the purposes of concluding permanent disability award payments. If the worker's statement is not independently verifiable, the Board will make a determination based on the evidence available, including information provided by the worker.

Examples of the kinds of independent verifiable evidence that may support a worker's statement that he or she intended to work past age 65, and to establish the date of retirement, include the following:

- names of the employer or employers the worker intended to work for after age 65, a description of the type of employment the worker was going to perform, and the expected duration of employment
- information from the identified employer or employers to confirm that he or she intended to employ the worker after the worker reached age 65 and that employment was available
- information provided from the worker's pre-injury employer, union or professional association to confirm the normal retirement age for workers in the same pre-injury occupation
- information from the pre-injury employer about whether the worker was covered under a pension plan provided by the employer, and the terms of that plan

This is not a conclusive list of the types of evidence that may be considered. The Board will consider any other relevant information in determining whether a worker would have worked past age 65 and at what date the worker would have retired.

Where the Board is satisfied that a worker would have continued to work past age 65 if the injury had not occurred, permanent disability award periodic payments may continue past that age until the date the Board has established as the worker's retirement date. At the worker's age of retirement, as determined by the Board, periodic payments will conclude even if the worker's permanent disability remains.

In situations where a worker in receipt of a permanent disability periodic payments dies from causes unrelated to the disability, the periodic payments will continue for the full month in which the death occurred. The effect of this policy will be that no overpayments will be considered to have arisen for the period from the date of the worker's death up to the end of the month covered by the last periodic payment.

If the worker dies prior to the implementation of the permanent disability award, the award is calculated and paid to the date of death. The situation where such a worker would have received a lump sum award is dealt with in policy item #45.00.

**EFFECTIVE DATE:** June 1, 2009 – Delete references to Board officer.  
**APPLICATION:** Applies on or after June 1, 2009

## **#42.00 PAYMENT OF PERMANENT DISABILITY AWARDS**

Permanent disability awards under sections 22 and 23 are normally payable monthly until the worker reaches retirement age as determined by the Board. However, some are paid as lump sums. The cheques are mailed to the worker's home address or, if she or he elects, direct to their bank by electronic direct bank deposit.

When a payment to a worker has been lost or stolen or otherwise not received or cashed by the worker, the worker may request a reissue of payment, but the Board will require a written and signed declaration of this from the worker before a reissue will take place.

### **#42.10 Commencement of Periodic Payments**

The general rule is that the permanent disability periodic payments commence at the date when the worker's temporary disability ceased and his condition stabilized or was first considered to be permanent.

Where a worker has been paid any temporary disability benefits under section 29 or 30 of the *Act*, the permanent disability periodic payments will take effect from the date following the termination of these temporary benefits. For the majority of cases, this will adequately reflect the financial impact of the disability on the worker's earnings.

There may, however, be the unusual situation where a worker has or could have returned to a significant level of employment with a minimal loss of income. Wage-loss benefits under section 30 would be 90% of the worker's average net earnings in this employment. Should the worker eventually be assessed at a permanent disability award rate which is higher than the rate paid for temporary benefits under section 30, it would appear that the worker may have suffered a loss of compensation income. The *Act*, however, precludes the payment of both temporary and permanent benefits for the same condition at the same time.

A problem of permanent disability award retroactivity also occurs when, although the worker had a temporary partial disability, the worker had or could have returned to full employment and has not, therefore, actually been paid any benefits under section 30. As previously stated, the *Act* requires that the Board recognize a disability as either temporary or permanent, but not both concurrently. When carrying out the final disability assessment, the Board will have the benefit of the earlier examination, or at least some other documentary evidence on file, on which the decision was made to delay the award. If the findings on the latter examination are the same as the initial findings, or only show a minimal degree of change, it is reasonable to consider the condition as having plateaued from the date of the first examination. In that event, the date of

the first examination should be the starting date of the permanent disability periodic payments. If, on the other hand, the latest examination shows a measurable and significant change since the first examination, the worker will be considered as having been, in the interim, temporarily disabled. In that event, the date of the last examination will be the starting date of the periodic payments.

When there was no examination by either a Board Medical Advisor or an External Service Provider when wage-loss benefits were terminated under section 30, and there is no other measurable data on file with which to make a comparison with the final assessment of the Board, the permanent disability award will be backdated to the date benefits were terminated under section 30.

**EFFECTIVE DATE:** June 1, 2009 – Delete references to Board officer.  
**APPLICATION:** Applies on or after June 1, 2009

#### **#42.12** *Retroactive Awards*

Where a permanent disability award is granted retroactively, the payments due prior to the date of the award will be paid in the form of a lump sum.

In calculating that sum, entitlement in respect of a portion of a month is determined by reference to the actual calendar days in a particular month. For example, if a worker is entitled to an award of \$1,000 per month, for the period March 17 to 31 (15 calendar days), the calculation is as follows:

$$\frac{\$1,000}{31 \text{ days}} \times 15 \text{ days} = \$483.87$$

A reduction in the lump sum is made in respect of periods of time during the period following the commencement of the award when the worker received wage-loss or rehabilitation benefits. However, no such reduction is made when the award is granted in the form of a lump sum and the monthly equivalent is less than \$20.00 per month at the time of the commutation.

The payment of interest on the lump sum is dealt with in policy item #50.00.

#### **#42.20** **Permanent Disability Award Adjustments**

If a permanent disability award to a worker or a dependant is paid or increased on the basis of a Review Division decision, and the finding is later reversed by the Workers' Compensation Appeal Tribunal, the permanent disability award payments are terminated or adjusted as of the date of the Workers' Compensation Appeal Tribunal decision. In such cases, the capitalization is adjusted by the reversal of an amount equivalent to the unused portion of the

capitalization or, in the case of a modification, the adjustment applies to the amount of the capitalization affected by the modification. The policy regarding relief of costs to employers in such circumstances is detailed in policy item #113.10.

**EFFECTIVE DATE:** March 3, 2003 (as to references to Review Division and Workers' Compensation Appeal Tribunal)  
**APPLICATION:** Not applicable.

## **#43.00 DISFIGUREMENT**

Section 23(5) of the *Act* provides:

Where the worker has suffered a serious and permanent disfigurement which the board considers is capable of impairing the worker's earning capacity, a lump sum in compensation may be paid, although the amount the worker was earning before the injury has not been diminished.

### **#43.10 Requirements for Award**

Section 23(5) establishes the following requirements:

1. The disfigurement must be "permanent". A temporary disfigurement is not sufficient.
2. The disfigurement must be "serious". No award will be made if the disfigurement is minimal.
3. The disfigurement must be one that the Board considers capable of impairing the worker's earning capacity. This is normally assumed in cases of the head, neck and hands. In other cases, a decision must be made which has regard to the age and occupation of the worker, the visibility and extent of the disfigurement and any other relevant circumstances. Since section 23(5) states that the amount the worker is currently earning does not have to be diminished, this requirement is concerned with the worker's long-term earning capacity.

Where there is disfigurement as well as a permanent disability, the worker may receive awards for both. Subject to the Board applying section 35(2) of the *Act* (see policy item #45.00), the award for the permanent disability is a periodic payment, and the award for disfigurement a lump sum. These awards must be assessed separately.

Disfigurement is concerned with the appearance of the body, not loss of bodily function. Therefore, a loss of skin function, for example, soreness or itchiness or unusual sensitivity to light, heat or humidity, will be considered for a permanent disability rather than a disfigurement award. The granting of an award will depend on the normal criteria for permanent disability awards.

The ultimate aim of disfigurement and permanent disability awards is to compensate for loss of earning capacity. The worker should not receive double compensation for the same loss. No disfigurement award is granted for something which is directly covered by a permanent disability award, for example, the deformity caused by the normal appearance of an amputated limb. A disfigurement award may be considered where the appearance of an impairment for which a permanent partial disability award has been granted is disfiguring to an exceptional degree.

If the worker receives an award of 100% under section 23(1), or an award for total unemployability under section 23(3), there is no additional loss of earning capacity which can form the basis for a disfigurement award.

Where psychological disability results from disfigurement, consideration will be given to a permanent disability award under section 23(1) or 23(3) following the normal practices for such awards (see Item C3-22.30, *Compensable Consequences – Psychological Impairment*).

## **#43.20 Amount of Award**

In calculating the amount of an award, the guidelines set out below apply:

1. Points are assigned to each of five factors assessed individually according to the table set out below. The assessment will normally be based on photographs of the worker but there may also be a visual examination of the worker in exceptional cases. The Board will give reasons for the points assigned to each factor.

<b>POINTS/FACTORS</b>	<b>0–24 POINTS</b>	<b>25–49 POINTS</b>	<b>50–74 POINTS</b>	<b>75–99 POINTS</b>
<b>Surface area of part of body</b> (see guideline 3)	Less than 25%	25%–49%	50%–74%	75% or more
<b>Texture and thickening.</b>	Mild alteration of texture.	Moderate thickening.	Major thickening.	Severe
<b>keloid scarring hardening.</b>	Slight wrinkly, furrows or marks.	Moderate hardening. Mild dryness or scaling. Prone to pimples.	Major hardening. Moderate dryness or scaling. Frequent pimples. Prone to ulceration.	Severe Major dryness or scaling. Frequent ulceration. Significant irregularity of scar.
<b>Colour</b>	Mild alteration of colour.	Moderate alteration of colour.	Major alteration of colour.	Severe alteration of colour.
<b>Visibility</b>	Less than 25% visible with work clothing.	25 to 49% visible with work clothing.	50 to 74% visible with work clothing.	75% visible or greater with work clothing.
<b>Loss of bodily form</b>	Mild depression or elevation.	Moderate depression or elevation.	Major depression or elevation. Moderate to major atrophy. Moderate to major irregularity of body.	Severe depression or elevation. Severe muscle or tissue loss.

2. An average is taken of the points assigned by dividing the total points by five. The result is rounded up to the nearest whole number. The disfigurement is then placed in one of four classes as follows:

Class 1	0 to 24 points
Class 2	25 to 49 points
Class 3	50 to 74 points
Class 4	75 to 99 points

3. The area of the body affected is determined. Five areas are recognized. A minimum and maximum award exists for each of the four classes for each area of the body including a dollar value per point within each class as shown in the following tables:

**January 1, 2012 – December 31, 2012**

**Head and Neck**

<b>Class</b>	<b>Maximum Points</b>	<b>Minimum Award for Class (\$)</b>	<b>Maximum Award for Class (\$)</b>	<b>Dollar Value per point within Class (\$)</b>
1	24	0	6,304.08	262.67
2	49	6,556.24	12,608.08	252.16
3	74	13,635.63	38,296.83	1,027.55
4	99	39,318.08	63,828.08	1,021.25

**Each Hand**

<b>Class</b>	<b>Maximum Points</b>	<b>Minimum Award for Class (\$)</b>	<b>Maximum Award for Class (\$)</b>	<b>Dollar Value per point within Class (\$)</b>
1	24	0	2,048.88	85.37
2	49	2,137.13	4,255.13	88.25
3	74	4,589.24	12,607.88	334.11
4	99	12,954.60	21,275.88	346.72

**Each Arm**

<b>Class</b>	<b>Maximum Points</b>	<b>Minimum Award for Class (\$)</b>	<b>Maximum Award for Class (\$)</b>	<b>Dollar Value per point within Class (\$)</b>
1	24	0	1,576.08	65.67
2	49	1,639.12	3,152.08	63.04
3	74	3,410.53	9,613.33	258.45
4	99	9,865.49	15,917.33	252.16

**Each Leg (including the foot)**

<b>Class</b>	<b>Maximum Points</b>	<b>Minimum Award for Class (\$)</b>	<b>Maximum Award for Class (\$)</b>	<b>Dollar Value per point within Class (\$)</b>
1	24	0	1,103.28	45.97
2	49	1,141.11	2,049.03	37.83
3	74	2,219.25	6,304.53	170.22
4	99	6,473.34	10,524.78	168.81

**Torso**

<b>Class</b>	<b>Maximum Points</b>	<b>Minimum Award for Class (\$)</b>	<b>Maximum Award for Class (\$)</b>	<b>Dollar Value per point within Class (\$)</b>
1	24	0	1,103.28	45.97
2	49	1,141.11	2,049.03	37.83
3	74	2,219.25	6,304.53	170.22
4	99	6,473.34	10,524.78	168.81

The dollar values per point within each class are adjusted on January 1 of each year. The minimum and maximum award for each class are adjusted accordingly. Effective June 30, 2002, the percentage change in the consumer price index determined under section 25.2 of the *Act*, as described in policy item #51.20 will be used.

4. The amount of the award in Class 1 is obtained by multiplying the average criterion score for disfigurement by the dollar value per point within the class. For example, if the average criterion score for a hand disfigurement is 6, it is assigned to Class 1 of the hands area of the body and the amount of the award is \$512.22 (6 x \$85.37).
5. The amount of the award for a disfigurement in Classes 2, 3 or 4 is obtained by subtracting the maximum points in the previous class from the average criterion score for disfigurement. Next, the total is multiplied by the dollar value per point within the class, followed by adding to the total, the maximum award in the previous class. For

example, if a burn to the chest is assigned an average criterion score of 34, it is in Class 2 of the torso area of the body and the amount of the award is \$1,481.58  $[(34 - 24) \times \$37.83 + \$1,103.28]$ .

Detailed examples of the application of the above guidelines are set out below:

#### Example 1

The worker has a loss of the fingernail and nailbed, slight shortening of the right mid finger, a small curved raised nail growing through the graft at the injury site. Assuming that the disfigurement was found capable of impairing earning capacity, the award would be calculated as follows:

<b>Factors</b>	<b>Description</b>	<b>Points</b>
Surface area	Less than 25%	2
Texture / keloid	Minimal alteration; no keloid	2
Colour	No contrast	0
Visibility	Less than 25%	20
Structure	Mild evidence of depression	5

- A. Total points are 29.
- B. Average criterion score is 6 (29/5). Disfigurement is in Class 1.
- C. Multiply the average criterion score for the hand disfigurement by the dollar value per point within Class 1 = \$512.22 (6 x \$85.37).

Amount awarded is \$512.22.

#### Example 2

The worker has healed burns that extend up the right side and front of the abdomen and chest. There is evidence of occasional ulceration and moderate irregularity of the scars. Scar colour is significantly different when compared to unaffected skin. Assuming that the disfigurement was found capable of impairing earning capacity, the award would be calculated as follows:

<b>Factors</b>	<b>Description</b>	<b>Points</b>
Surface area	Less than 25%	20
Texture / keloid	Some puckering and contraction moderate keloid, scars raised to 3 mm	70
Colour	Significant contrast	80
Visibility	Nil	0
Structure	No evidence of depression or elevation other than keloid	0

- A. Total points are 170.
- B. Average criterion score is 34 (170/5). Disfigurement is in Class 2.
- C. The maximum points for a torso disfigurement in the previous class (Class 1) subtracted from the average criterion score for the torso disfigurement is 10 (34 – 24).
- D. The total from line C multiplied by the dollar value per point within Class 2 for a torso disfigurement, followed by adding to the total, the maximum award for a torso disfigurement in the previous Class (Class 1) is \$1,481.58 [(34 – 24) x \$37.83 + \$1,103.28].

Amount awarded is \$1,481.58.

**EFFECTIVE DATE:** June 1, 2009 – Delete reference to Board officer.  
**HISTORY:** May 1, 2008 – Amendments to the formula for determining the amount of disfigurement awards to ensure that disfigurement awards increase uniformly within each class for greater degrees of disfigurement. Applies to all decisions including appellate decisions made on or after May 1, 2008.  
**APPLICATION:** Applies on or after June 1, 2009

## **#44.00      PROPORTIONATE ENTITLEMENT**

Section 5(5) of the *Act* provides:

Where the personal injury or disease is superimposed on an already existing disability, compensation must be allowed only for the proportion of the disability following the personal injury or disease that may reasonably be attributed to the personal injury or disease. The measure of the disability attributable to the personal injury or disease must, unless it is otherwise shown, be the amount of the difference between the worker's disability before and disability after the occurrence of the personal injury or disease.

This subsection deals with cases where the compensability of the immediate injury and disability has been accepted by the Board. It does not concern itself with the initial adjudication as to the causation of the particular disability.

### **#44.10      Meaning of Already Existing Disability**

The mere fact that the worker suffered from some weakness, condition, disease, or vulnerability which partially caused the personal injury or disease is not sufficient to bring Proportionate Entitlement into operation. The pre-existing condition must have amounted to a disability prior to the occurrence of the injury or disease.

Three situations are distinguished:

1. In cases where it has been decided that the precipitating event or activity, and its immediate consequences, were so severe that the full disability presently suffered by the worker would have resulted in any event, regardless of any pre-existing disability, section 5(5) should not be applied.
2. In cases where the precipitating event or activity, and its immediate consequences, were of a moderate or minor significance, and where there is only x-ray evidence and nothing else showing a moderate or advanced pre-existing condition or disease, Proportionate Entitlement should not be applied. These cases should not be classified as a disability where there are no indications of a previously reduced capacity to work and/or where there are no indications that prior ongoing medical treatment had been requested and rendered for that apparent disability. In determining whether there has been ongoing treatment, regard will be had to the frequency of past treatments and how long before the injury they occurred.

3. Where the precipitating event or activity, and its immediate consequences, were of moderate or minor significance, but x-ray or other medical evidence shows a moderate to advanced pre-existing condition or disease, and there is also evidence of a previously reduced capacity to work and/or evidence of a request for and rendering of medical attention for that disability, section 5(5) should be applied.

Section 5(5) only applies where an injury is “superimposed” on an already existing disability. The injury and the existing disability must be in the same part of the body.

The fact that the worker has an award from another agency for a pre-existing disability does not affect the Board’s practice. The Board makes its own assessment of the pre-existing disability and is not bound by the percentage awarded by the other agency.

#### **#44.20 Temporary Disability and Health Care Benefits**

It is not the policy of the Board to apply the provisions of section 5(5) to health care benefits or temporary disability benefits. Ordinary wage loss will be paid on the simple presumption that the worker was fit and able to carry on regular duties prior to the injury and is, at the time of receiving wage-loss benefits, totally or partially unable. The only conclusion to be derived from these facts is that the injury itself is the sole cause of that immediate total or partial disability. Proportionate Entitlement is thus a concept applicable only to permanent disability awards.

#### **#44.30 Permanent Disability**

Where a worker already has a pre-existing disability, and suffers a work injury resulting in an aggravation of the disability, wage-loss compensation is paid for the period of any temporary total disability. If the aggravation was temporary only and the worker recovers from the aggravation so that she or he is restored to the position of the pre-existing disability, there is then no residual disability resulting from the work injury, and therefore no further compensation. However, where a pre-existing disability is permanently aggravated by the work injury, and the worker’s condition has stabilized, the Board must then consider how much is the compensable aggravation.

Assuming that a pre-existing impairment has been established, section 5(5) requires that compensation shall be allowed only for such proportion of the worker’s “disability” as may reasonably be attributable to the personal injury or disease. “Disability” means loss of body function or physical impairment.

The measure of the disability attributable to the personal injury or disease shall, unless it is otherwise shown, be the amount of the difference between the worker's disability before and disability after the occurrence of the personal injury or disease. (10)

The Board's practice in relation to section 5(5) has no relevance to conditions which arise after the injury. It is only concerned with pre-existing problems. The Board's practice is that it will apportion its responsibility in respect of a disability attributable to causes other than the work injury arising after the injury.

Consider the example of a worker whose average net earnings are \$1,000 per month and who, following a work injury, has a 10% disability. If the whole of that disability is attributable to the injury, the monthly permanent disability award granted under section 23(1) is 90% of 10% of \$1,000, i.e. \$90.00 a month. If, however, 3% out of the total impairment existed prior to the injury, section 5(5) requires that compensation only be awarded in respect of the 7% caused by the injury. The worker would therefore receive 90% of 7% of \$1,000 per month, i.e. \$63.00.

#### **#44.31**      *Application of Proportionate Entitlement*

In every case where there was a pre-existing disability, the Board has to decide whether the loss of earnings experienced by the worker after the injury is wholly the result of the compensable disability or partly the result of the pre-existing disability. If it decides that the whole loss is the result of the compensable disability, no reduction in the award is made under section 5(5). If it decides that a portion of the loss is attributable to the pre-existing disability, a permanent disability award is only granted for the portion attributable to the compensable disability.

The Board feels that this is fair to workers in that it allows for the fact that their pre-injury earnings may already have been reduced by the pre-existing disability. On the other hand, it ensures that the Board does not become responsible for loss of earnings which are really attributable to the delayed or progressive effect of non-compensable pre-existing disabilities. The Board recognizes that it is often difficult in practice to properly allocate the causes of a loss of earnings where there is pre-existing disability, but do not feel that it is any more difficult than other decisions that have to be made under the *Act*, or that this difficulty justifies a different interpretation of section 5(5).

## **#45.00 LUMP SUMS AND COMMUTATIONS**

Section 35(2) of the *Act* provides:

The Board may in its discretion

- (a) commute all or part of the future amounts that are to be set aside for payment of a retirement benefit and the periodic payments due or payable to the worker to one or more lump sum payments, to be applied as directed by the Board; and
- (b) divide into periodic payments compensation payable in a lump sum.

In case of death or permanent total disability or in case of permanent partial disability where the impairment of earning capacity exceeds 10% of the worker's earning capacity at the time of the injury, no commutation of periodic payments can be made under subsection (2) except upon the application of and at an amount agreed to by the dependant or worker entitled to such payments. (11)

### **#45.10 Permanent Disability Periodic Payment Categories/Lump Sum Awards**

Category A:

Where

1. a compensable disability has been assessed at not more than 10% of total disability, and
2. the permanent disability periodic payment is not more than \$200.00 per month,

a lump sum will be awarded in lieu of a monthly permanent disability periodic payment and the additional future amounts to be set aside by the Board for the payment of a retirement benefit under section 23.2 of the *Act*.

Category B:

In any case not within Category A, where the permanent disability periodic payment is more than \$200.00 per month, the award will consist of a monthly permanent disability periodic payment and the additional future amounts to be set aside by the Board for the payment of a retirement

benefit. A commutation will only be considered under the circumstances outlined below.

With the exception of the retirement benefit provision, this policy applies similarly to periodic payments of compensation made to a dependant of a deceased worker.

Where a worker or dependant has more than one permanent disability award or dependant benefit on one or more claims, the above figures apply to the combined total. Where the worker or dependant has had previous commutations or lump sum awards, these previous awards are not applied to the combined total.

Where a commutation request is made after the granting of a permanent disability award or dependant benefit, the monetary level at the date of the request is used rather than the level at the date of the award.

A review of the monetary level in Categories A and B will be undertaken annually. Any changes to the amount will normally take place on the first day of the month following the month of the review.

## **#45.20 Criteria for Allowing or Disallowing a Commutation**

The same criteria apply, whether or not the Board has recovered all or part of the capital reserve in a third party action.

Workers granted awards that fall within Category A will automatically be given a lump sum award.

The general rule is that no commutation will be granted for cases in Category B.

There are, however, certain situations where a commutation may be desirable. The purpose of the guidelines set out below is to define those situations where it is in the worker's long term interests to receive a commutation and to state the terms and conditions on which such commutations are granted.

In considering a commutation, the following will apply:

1. A commutation must be for a specific purpose.
2. A commutation will, in general, only be allowed for purposes that are calculated to enhance the income position of the worker.
3. The applicant must have a stable source of income other than the disability award.

4. A commutation will not be allowed where the applicant is a person whom the Board considers incapable of managing his or her own affairs or who has a demonstrated incapacity for money management.
5. Where there is an application by a surviving spouse to commute an award which is paid in whole or part for the children regard may have to be had to the separate interests of the children.
6. If the other requirements are met, a commutation may be in the worker's long-term interests, notwithstanding the worker's medical condition may not have settled or involves a significant risk of deterioration. However, while a potential deterioration in the worker's condition will not automatically bar a request, it is a relevant factor to be considered. It might, for instance, lead to a conclusion that the worker's existing income from other sources would not be stable from a long-term point of view.

Similarly, the fact that a disability may improve in the future will not automatically bar a request for a commutation, even though the commutation will prevent the Board from reducing the permanent disability award when the improvement occurs. The possibility of such an improvement may, however, be taken into account if it is significant. It may influence the amount of commutation granted.

7. A short expectation of life or a worker's wish to benefit the dependants following his or her death is not a ground on which the Board can permit a commutation.

**EFFECTIVE DATE:**

March 1, 2007

**APPLICATION:**

The amendments to this policy, that term commutations are no longer available, brought into effect by BOD Resolution No. 2007/01/23-02, apply to all applications for commutations made on or after March 1, 2007.

**HISTORY:**

Housekeeping amendments made on November 24, 2011 in accordance with amendments to the *Act*.  
 This policy was amended effective October 1, 2002. Changes were made to the threshold amounts for automatic commutations and the criteria for considering commutations were broadened. Please refer to BOD Resolution No. 2002/08/27-04 for details of the amendments. The policy as amended October 1, 2002 applies to all new claims received, all active claims that were awaiting an initial permanent disability award adjudication, and all active claims that were awaiting initial adjudication of periodic payments of compensation to a dependant of a deceased worker, on or after October 1, 2002. The policy as amended October 1, 2002 does not apply to workers in receipt of a permanent disability award based on a projected loss of earnings that was initially adjudicated before October 1, 2002.

This policy was created on July 16, 2002 to apply to all decisions made on or after July 16, 2002 in respect of injuries occurring on or after June 30, 2002, permanent disabilities where the permanent disability first occurred on or after June 30, 2002, and recurrences where the recurrence occurs on or after June 30, 2002, irrespective of the date of injury.

#### **#45.21**      *Death of Worker Prior to Award under Category A in Policy Item #45.10*

Under the terms of the *Act*, disability awards are payable to a worker. There is no provision for a disability award to be payable in respect of a deceased worker.

The *Act* distinguishes between two different categories of benefits:

1.      Benefits payable to a disabled worker.
2.      Benefits payable to dependants and others in respect of the death of a worker.

No compensation under the first heading can validly be awarded in respect of future disability after the death of a worker. Where future benefits have been issued after the death of a worker, the benefit will be cancelled and recalculated up to the date of the worker's death. The letter of decision sent by the Board was therefore void, and no payment was due under it.

**EFFECTIVE DATE:**      June 1, 2009 – Delete reference to Disability Awards Officer.

**APPLICATION:**      Applies on or after June 1, 2009

#### **#45.30**      **Types of Commutations Permitted**

Where a partial or full commutation of a permanent disability award is granted, the corresponding portion of the future amounts that are to be set aside for payment of a retirement benefit will also be commuted.

Any amounts that have already been set aside by the Board in the retirement reserve will be held in the reserve until the worker reaches retirement age. These amounts will not be commuted.

There are two types of commutations that the Board may permit:

1.      A partial commutation resulting in a reduced level of both the permanent disability periodic payments, and corresponding retirement benefits set aside by the Board.

2. A full commutation of both the permanent disability award, and corresponding retirement benefits set aside by the Board.

With the exception of the retirement benefit provisions, the Board permits the same types of commutations of periodic payments of compensation made to a dependant of a deceased worker.

To ensure that a commutation is used for the purpose for which it is sought, the Board may make a commutation cheque payable to a worker and to another.

**EFFECTIVE DATE:** March 1, 2007  
**APPLICATION:** This policy applies to all applications for commutations made on or after March 1, 2007.  
**CROSS REFERENCES:** Chapter 18, *Retirement Benefits*

## **#45.40 Purpose of Commutations**

Certain purposes for which commutations are commonly requested are discussed below. The list is not intended to cover every purpose for which a commutation may be requested but rather is designed to provide guidelines to ensure the consistent handling of certain common types of application.

### **#45.41 *Paying Off Debts***

The Board is concerned that lenders might be encouraged to grant excessive extensions of credit to workers in receipt of permanent disability awards if they became aware that commutations could easily be obtained to pay off debts. Section 15 of the *Act* seeks to protect workers from creditors by making permanent disability periodic payments non-assignable. The Board will not undermine this intention by freely allowing commutations for the purpose of debt reduction. Therefore, a commutation is more likely to be allowed for paying off debts that were incurred prior to the injury.

A person incurring heavy debt may have serious long-term problems which will not be resolved simply by a commutation to pay debts. These problems may lead to incurring further debt even if the existing debt is paid. The person will then be in an even more serious position than before because there will now be no permanent disability periodic payments. It may, in such cases, be more appropriate to refer the worker for financial counselling rather than to attempt to resolve the situation by a commutation of permanent disability periodic payments. Nevertheless, a commutation to pay off debts may be advisable and in the best interests of the worker if it will avoid high interest obligations. Commutation applications for this purpose will be carefully scrutinized for other alternatives before being allowed.

#### **#45.42**      *Investments*

A commutation will not be allowed for investment purposes.

#### **#45.43**      *Starting a Business*

From a purely financial standpoint, it may be difficult to distinguish between investing in one's own business and other forms of investment. It is, moreover, often difficult for officers of the Board to determine with any degree of certainty whether what the worker wishes to undertake is a sound business venture.

Investing in one's own business, however, may be in the worker's best interests where there is a strong element of rehabilitation involved and the worker will be an active participant in operating the business. Any application for a commutation for the purpose of starting a business will be thoroughly investigated with these considerations in mind.

In each case where a business start-up is contemplated for which a commutation has been requested, or as a vocational rehabilitation measure, the Board will obtain, with the worker's written consent, an appraisal of the viability of the proposed business from the Business Development Bank of Canada or some similar organization before a final decision on the commutation request, or rehabilitation measure, is made.

**EFFECTIVE DATE:**            June 1, 2009 – Delete reference to Board officer.  
**APPLICATION:**                Applies on or after June 1, 2009

#### **#45.44**      *Education*

Unless the proposed educational program will promote the worker's career, a commutation for this purpose would not normally enhance the worker's income position and consequently would not satisfy the above general guidelines. There may, however, be some therapeutic benefit in allowing workers to improve their education when the improvement cannot be provided through normal rehabilitation programs. The requirement for the applicant to have a stable source of income may be waived where the Board is satisfied that the training or educational program will increase the prospects of employment and therefore enhance the income position over the long term. Where the program will not increase the employment prospects, but will have a significant therapeutic benefit, the Board may waive the requirement that the commutation be for a purpose that enhances the worker's income position. In such a case, it will not waive the requirement that the applicant have a stable source of income.

## **#45.45**     *Buying a Home*

Commutations for purchasing a home will be allowed under the following conditions:

1. The home is purchased as a personal residence.
2. The worker will obtain clear title to the property subject only to any mortgage.
3. Any mortgage payments are well within the worker's ability to pay from other income.
4. The size, value and upkeep costs of the home are in line with other income.

The discharge or reduction of an existing mortgage will be dealt with under the criteria for paying off debts in policy item #45.41, rather than under the criteria for buying a home. In administering this feature, however, a request for a commutation to discharge or reduce an existing mortgage should primarily be considered in the same general vein as a commutation to purchase a home, with the added insurance that consideration should be given to the safeguards built into the debt payment provisions. The expectation of this approach is that, in general, given similar circumstances, there should be little difference in the result following a decision made under either category. A commutation for the purpose of extending an existing home may be allowed if the above requirements are satisfied.

A commutation will not normally be allowed for the purpose of purchasing a second home to be used for vacations, or retirement, or to be rented out. The home must be for the purpose of providing the claimant with current accommodation.

## **#45.50**     **Decision-Making Procedures**

The Board is responsible for investigating an application for a commutation and making a decision on the application. Vocational rehabilitation input may be obtained before making a decision.

Where a commutation application is under consideration, the value of the proposed commutation can be made available so that the claimant may properly evaluate the options open.

If the value of a commutation under Category B in policy item #45.10 exceeds the limit set in Category A, prior approval by a Vice-President is required before granting the request. Where an application is received that does not fall within

the guidelines and it is thought that there should be some departure, the application must also be referred to the Vice-President for consideration.

An employer is not normally advised of the granting of a commutation. An exception is made where the employer is the Federal Government. It is advised of the amount and type of the commutation.

**EFFECTIVE DATE:** June 1, 2009 – Delete references to Board officers, Vocational Rehabilitation Services and Compensation Services Division.

**APPLICATION:** Applies on or after June 1, 2009

### **#45.60 Amount Paid on Commutations**

When a permanent disability award reserve and a retirement reserve are established or a liability is calculated for an award and a retirement benefit, the monthly payment amount and the periodic future amounts to be set aside by the Board for the payment of a retirement benefit, are converted to a lump sum by applying an actuarial net discount rate. This provision also applies where a reserve is established or a liability is calculated for periodic payments of compensation made to a dependant of a deceased worker. The actuarial net discount rate is set by the Board and represents the anticipated difference between long term future investment returns and long term future inflation.

Similarly, when a permanent disability award commutation is granted, the monthly permanent disability award amount and the periodic amounts set aside by the Board for a retirement benefit are converted to a lump sum by applying a commutation net discount rate. For permanent disability awards and the future amounts to be set aside by the Board for the payment of a retirement benefit that are automatically commuted by the Board without a request from the worker, the commutation net discount rate used will be equal to the actuarial net discount rate. For permanent disability awards and the future amounts to be set aside by the Board for the payment of a retirement benefit that are commuted by the Board at the worker's request, the commutation net discount rate used will be equal to the actuarial net discount rate increased by .5 percentage points. The increased net discount rate also applies to a commutation granted by the Board at the surviving dependant's request.

### **#45.61 *Calculation of Lump-sum Payment or Commutation***

Where, as a result of the application of the policies outlined in policy items #45.10 to #45.60, the Board decides on a lump sum or commutation, it is paid forthwith.

Whenever a lump-sum payment or commutation is calculated following the review or appeal process, the calculation will be based on the date on which it is processed.

**EFFECTIVE DATE:** June 1, 2009 – Delete reference to Board officer.  
**HISTORY:** April 8, 2003 – Amended to state that whenever a lump sum payment or commutation is calculated following the review or appeal process, the calculation will be based on the date on which it is processed.  
**APPLICATION:** Applies on or after June 1, 2009

## **#46.00 REVIEW OF OLD PENSIONS UNDER SECTION 24**

Section 24(2) of the *Act* provides:

With respect to a claim for compensation to which this section applies, the board must, on application by the worker, reconsider the compensation benefits; and, if it decides that, in its opinion, the worker is not receiving adequate compensation having regard to the projected loss of income resulting from the disability, periodic payments must be established or raised accordingly.

### **#46.01 *Claims to Which Section 24 Applies***

Section 24(1) provides that

This section applies to the claims for compensation that the Board may by regulation determine, provided that

- (a) the worker is still suffering from a compensable disability sustained more than 10 years before the application under subsection (2); and
- (b) a permanent disability award was made by the Board based on a percentage of total disability of 12% or greater, or the case is of a kind in which the Board uses a projected loss of earnings method in calculating compensation.

Regulations have been issued by the Board which are set out below:

1. The regulations come into effect on the 1st day of December, 1982.
2. The regulations with respect to the review of old disability pensions, promulgated by the Board on the 21st day of July, 1975, the 13th day of November, 1975, and the 19th day of August, 1976 (B.C. Regulations 524/75, 746/75 and 492/76) are hereby repealed.

3. Unless the Board otherwise determines, section 24 of the Act applies to claims in which all of the following conditions are present:
  - (1) The worker is still suffering from a compensable disability sustained more than ten years previous to the application under section 24(2).
  - (2) A permanent disability award was made by the Board based on a percentage of total disability of 12% or greater, a disability award was made for an injury involving the spinal column, or a disability award was made for an injury to a part of the body other than the spinal column on or after October 1, 1977. Where the worker is still suffering from two or more compensable disabilities, this condition is satisfied if permanent disability awards were made by the Board which in aggregate were based on a percentage of total disability of 12% or greater, provided that a minimum of 5% of total disability was attributed to an injury or injuries sustained more than ten years previous to the application under section 24(2).

Clause 3(1) of these regulations does not mean that it is a requirement that each claim considered under section 24 must be more than 10 years old. Where a worker has suffered several injuries with permanent disability resulting in several claims, the whole of the compensable disabilities resulting from these claims may be considered, provided that at least one of the compensable disabilities was sustained more than 10 years previous to the application under section 24(2), and that a minimum of 5% of total disability was attributed to an injury or injuries sustained more than 10 years previous to the application.

The requirement in Clause 3(2) that the percentage of disability exceed 12% is a separate and independent requirement from Clause 3(1). Thus, it is not necessary that the disability award should have been made more than 10 years previous to the application, or that it should have been calculated at 12% or greater at any particular time.

The requirement in Clause 3(2) that a non-spinal disability of less than 12% be one that was assessed on or after October 1, 1977, in conjunction with Clause 3(2), means that no application for such a disability can be made under section 24 until October 1, 1987.

Notwithstanding that a worker suffering a permanent disability has received an award that has been wholly or partly commuted, or an award for a fixed term, the worker may apply under this section, but he shall be deemed to be still receiving the periodic payments that have been commuted, or the life equivalent of the periodic payments made for a fixed term. (12)

## *#46.02 Calculation of Benefits under Section 24*

Where a worker is under the age of 65 years, compensation is considered adequate for the purposes of this section if it equals 75% of the projected loss of earnings resulting from the disability. (13)

Section 24(4) provides that "Where a worker is 65 years of age or over, compensation is considered adequate for the purposes of this section if it equals 75% of the projected loss of retirement income resulting from the disability."

Where a worker is under the age of 65 years, periodical payments established or raised under this section are subject to readjustment by reference to subsection (4) upon the worker attaining the age of 65 years. (14)

The calculation of benefits is made in the manner the Board determines. (15)

Where a worker is under the age of 65 years, the Board must determine the projected loss of earnings resulting from the disability. This involves three steps:

1. A forward projection of the earning capability of the worker as it existed prior to the disability.
2. A projection of the present earning capability of the worker.
3. A determination of the extent to which any difference between (1) and (2) is a result of the disability.

These calculations are made primarily by reference to evidence in the particular case, with two exceptions. A table of monthly average wage rates in BC (see Supplement No. 1, Appendix 5) is used to establish two of the variables; and an age factor is applied to those cases where the disability was suffered when the worker was under the age of 23. With regard to the former, a projection of the pre-disability earning capacity is made by comparing the claimant's actual pre-injury earnings, limited by the maximum in effect at the time of injury, with the monthly average wage rate in the table for that year and applying the same ratio to the average wage in the table for the year when the calculation is being made. In making this projection, no account is taken of promotions which the claimant might have obtained if he had not been injured.

Where a worker is 65 years of age or over, the Board must determine the projected loss of retirement income resulting from the disability. This involves a determination of:

1. The retirement income that the worker would have been likely to be receiving if he or she had not sustained the disability.
2. The retirement income the worker is receiving.

3. A determination of the extent to which any difference between (1) and (2) results from the disability.

Here again, the determinations are made to some extent by reference to evidence in the particular case; but two standard formulae are used with regard to two important items.

The first relates to retirement income from savings. Many workers save part of the earnings accrued during their working lives, and these savings, or income from the savings, become part of retirement income. The Board must consider, therefore, the loss of this element of retirement income resulting from the disability. To determine loss of retirement income from savings, a standard formula is used, based on such evidence as the Board has been able to obtain from aggregated data relating to the savings habits of Canadian families.

The second item being considered by a standard formula is the loss of retirement income from earnings by people at and above the age of 65 years. The formula selected is to use a flat rate cash amount per month for each percentage of disability.

Where a worker's pension has been adjusted under section 24 when under the age of 65 years and the worker has now reached that age, the readjustment is done in the following manner:

1. When an adjustment is made to a pension for a worker who is under the age of 65, that adjustment will be diarized for review three months prior to the worker attaining the age of 65.
2. When the matter comes up for review, the file will be considered in accordance with the procedures developed for calculating awards for workers aged 65 or over. For the purpose of this calculation, the original functional award in effect prior to any previous adjustment under section 24, plus applicable cost of living adjustment as described in policy item #51.00, will be regarded as the permanent disability award in effect at age 65.
3. The term adjustment payable to age 65 will automatically terminate when the worker reaches age 65. The adjustment calculated as per item (2) above will then come into effect. This new pension will be the higher of the original pension award plus cost of living adjustments as described in policy item #51.00 or the adjusted permanent disability award determined in reference to the calculation for workers aged 65 or over.

The detailed calculation formulae are set out in Appendix 5 to this manual.

**#46.03**      *Maximum and Minimum Periodic Payments under Section 24*

Section 31 applies to the calculation of compensation under section 24, but the calculation is not limited by reference to average earnings at the time of injury. (16)

The periodic payments awarded to a worker following a review under this section shall not exceed the maximum that the Board would award to a worker in an occupational category similar to the occupation of the applicant worker before the injury if she or he had, at the effective date of the review under this section, suffered a compensable disability similar to the compensable disability being suffered by the applicant worker. (17)

No decision under this section shall result in periodical payments to any worker being lower than they would if no application had ever been made under this section. (18)

**#46.04**      *Date when New Periodic Payments Commence under Section 24*

Where a worker whose disability occurred before January 1, 1965 applies under this section within one year of the earliest date on which becoming eligible to do so, an increase or establishment of benefits under section 24 is effective from September 1, 1975 and, in all other cases, the effective date for the commencement of an increase or establishment of benefits under the section is the date on which the application is received at the Board. (19)

The following table sets out when claimants whose disabilities occurred prior to January 1, 1965 became eligible to apply under section 24.

Injury Occurred On or Before	Date of Commencement of Eligibility
December 31, 1925	August 1, 1975
December 31, 1928	September 1, 1975
December 31, 1932	October 1, 1975
December 31, 1936	December 1, 1975
December 31, 1940	January 1, 1976
December 31, 1944	February 1, 1976
December 31, 1948	April 1, 1976
December 31, 1952	May 1, 1976
December 31, 1956	June 1, 1976
December 31, 1960	July 1, 1976
December 31, 1964	August 1, 1976

#### *#46.05 Reapplication under Section 24*

A worker may reapply under this section for reconsideration of his compensation benefits after a further 10 years have elapsed since the last previous application under this section. (20)

#### **#46.10 Reinstatement of Commuted Pensions under Section 26**

Section 26(1) of the *Act* provides that “Where periodical payments for permanent disability were awarded by the Board prior to January 1, 1966, and where

- (a) the award was for a percentage of total disability of 12% or greater, and the whole of the periodical payments was commuted prior to that date;
- (b) a portion of the periodical payments equivalent to 12% of total disability or greater was commuted prior to that date; or
- (c) the award was for a percentage of total disability of 12% or greater and was of periodical payments for a fixed term, and where the worker to whom the award had been made is still suffering from the disability, the Board may, on the application of the worker, establish new periodic payments, which are to commence for the month in which the application is received at the Board.”

#### *#46.11 Computation of Twelve Per Cent Disability*

In determining the percentage of total disability represented by a commutation of periodical payments, the monthly dollar amount of the commutation should be compared with the monthly dollar amount of the periodical payments before the commutation, and multiplied by the percentage of total disability represented by the periodical payments before the commutation.

If the worker has had more than one commutation in respect of the same or different disabilities, the total value of the commutations and the disabilities is taken into account. In this case, all the commutations required to make the 12% must have occurred prior to January 1, 1966.

Consider the following example of a worker injured in 1936 who had two partial commutations, one in 1952 and one in 1955, who applied for reinstatement in September, 1974.

A.	True percentage of total disability awarded (as varied by age and wage factors)	61.20
B.	Monthly wage rate prior to injury	100.00
C.	Life value of pension per month	38.25
D.	Monthly amount of 1952 commutation	6.75
E.	1952 commutation as percentage of whole disability $\frac{(D \times A)}{C} = \frac{6.75 \times 61.20}{38.25}$	10.80
F.	Remaining percentage of total disability (A-E)	50.40
G.	Balance of monthly pension (C-D)	31.50
H.	Recalculation of monthly pension following policy item #39.61 $31.50 \times \frac{66-2/3}{62-1/2} \times \frac{2,000.00}{12 \times 100.00}$	56.00
I.	Monthly amount of 1955 commutation	2.00
J.	1955 commutation as percentage of whole disability $\frac{(I \times F)}{H} = \frac{2.00}{56.00} \times 50.40$	1.80
K.	Total percentage of disability commuted (E + J)	12.60

In past years, the Board varied the assessed percentage of disability according to the earnings and age of the worker. In calculating the percentage of disability commuted for the purposes of section 26, the disability as varied by these factors is used.

#### **#46.12 Purpose of Section 26 Already Achieved**

Section 26(5) provides that “This section does not apply where the purpose of the section has been achieved as a result of an application under section 24 or in some other way.”

Therefore, section 26 has no application to a situation where, in the events that have occurred, a worker has not lost the future benefit of any cost of living increases by reason of the commutation. As under section 26, however, such a

worker receives future cost of living increases based on what the periodical payments would have been had they not been commuted.

To take an example, suppose a worker was receiving a pension for permanent total disability, and in 1964 arranged with the Board a partial commutation of that pension equivalent to \$10.00 a month. If the remaining pension was increased pursuant to subsequent increases in the statutory minimum, it would, in November 1974, be \$341.01 less \$10.00 per month, i.e. \$331.01. The increases in the minimum have exceeded the cost of living increases, and in the result, the worker has not lost any cost of living increases by reason of the commutation. As cost of living adjustments are now made, the worker will continue to receive the cost of living percentage applied to \$341.01 so that the pension will continue to be the same as it would have been without the commutation, less the commuted \$10.00 per month.

### **#46.13**      *Term Pensions*

Where the award was for a fixed term that has not expired or been commuted, section 26 applies upon the expiry of the term. (21) The worker must also wait for the expiry of the term if he or she has to combine an expired or commuted pension with the term pension to satisfy the 12% requirement.

Occasionally, a term pension may be converted into a life pension if the worker is found to have an increased entitlement because of a deterioration in the pensionable condition. Section 26 is applicable as soon as the conversion takes place.

### **#46.14**      *Rate of New Periodic Payments*

Section 26(3) provides that "In order to calculate the rate of new periodic payments to be established under this section, the Board must determine

- (a) the monthly payments that would have been payable on January 1, 1966 if the award had been of periodic payments for life and there had been no commutation, or, where the commutation was partial, the additional rate of monthly payments that would have been payable on that date if there had been no commutation; and
- (b) the additional amount of monthly payments that would have been payable for the month during which the application is received by way of increases on the amounts calculated under paragraph (a) if those amounts had continued to be due; namely, the total of all increases that would have been

made from January 1, 1966 to and including the last day of the month preceding the date the application is received.”

The rate of the new periodical payments is the amount calculated under clause (b). (22)

Consider the following examples:

1. Worker injured in 1938. Term award which expired in 1952. Application under section 26 in February, 1976.
  - A. True percentage of total disability awarded (as varied by age and wage factors) 18.58%
  - B. Monthly wage rate prior to injury \$80.00
  - C. Life value of permanent disability award per month (23)  
 $\frac{18.58}{100} (A) \times \frac{62-1/2}{100} \times 80.00 (B)$  \$9.29
  - D. Monthly permanent disability award that would have been payable if there had been no term award under provision in policy item #39.61 (section 33(4))  
 $9.29 (C) \times \frac{66-2/3}{62-1/2} \times \frac{2,000.00}{12 \times 80.00 (B)}$  \$20.64
  - E. Provision in #39.62 inapplicable as would result in permanent disability award less than under policy item #39.61
  - F. C.P.I. from January 1, 1966 to January 1, 1976, on \$20.64 (D)  
76.3452% of \$20.64 \$15.75
  - G. New monthly periodical payments under section 26 commencing February 1, 1966 \$15.75
  
2. Claimant injured in December, 1944. Commuted part of permanent partial disability pension in 1950. Application under section 26 in November, 1974.
  - A. True percentage of total disability awarded (as varied by age and wage factors) 40.97%
  - B. Monthly wage rate prior to injury \$150.00

C.	Life value of pension per month $\frac{40.97 \text{ (A)}}{100} \times \frac{66-2/3}{100} \times 150.00 \text{ (B)}$	\$40.97
D.	Monthly amount commuted	\$14.95
E.	Percentage of total disability commuted $\frac{14.95 \text{ (D)}}{40.97 \text{ (C)}} \times 40.97 \text{ (A)}$	14.95%
F.	Provision in policy item #39.61 inapplicable as injury occurred after March 18, 1943	
G.	Additional monthly pension that would have been payable had there been no commutation under provision in policy item #39.62 $\frac{14.95 \text{ (E)}}{100} \times 130.00$	\$19.44
H.	C.P.I. on additional monthly pension (G) from January 1, 1966 to July 1, 1974 49.85% of \$19.44	\$9.69
I.	Additional monthly periodical payments under section 26 commencing November 1, 1974 (to be added to existing pension)	\$9.69

#### #46.15 *Cost of Living Adjustment After Reinstatement*

Cost of living adjustments after the establishment of the new periodical payments are based on the sum of the amounts calculated under clauses (a) and (b) in policy item #46.14. (24) A formula for calculating these adjustments, which applies both in cases of total and partial commutation is set out below.

Where the commutation was partial, so that part of the original award is still subsisting, the residue of the original award may be blended with the reinstated award under section 26. Where the commutation was total, the formula applies to the reinstated award, and where the commutation was partial, it applies to the blend of the residue of the original award with the reinstated award.

The formula is:

1. The amount of pension benefits being paid for the month preceding the cost of living adjustment \$
- PLUS

2.	The monthly amount of pension that had been commuted	\$
	Subtotal	\$
3.	The application of the indexing factor described in policy item #51.00 to that subtotal	\$
	Second Subtotal	\$
	LESS	
4.	The monthly amount of pension that had been commuted	\$
	Total	\$

The resulting total is the monthly pension that will be applicable after the cost of living adjustment.

#### **#46.16      *Commutation of New Periodic Payments***

Generally, no commutation will be allowed in respect of the new periodical payments awarded under section 26. However, the Board does have discretion to permit this in unusual cases.

## NOTES

- (1) See policy item #65.04
- (2) See policy item #40.00
- (3) S.23(2)
- (4) Permanent Disability Evaluation Schedule Appendix 4
- (5) See policy item #25.10
- (6) S.23(4); See policy item #34.20
- (7) See policy item #37.21
- (8) S.33(4)
- (9) Earnings and Employment Trends, Jan/Feb 2001, BC Stats, Ministry of Finance and Corporate Relations, Province of British Columbia
- (10) S.5(5)
- (11) S.35(3)
- (12) S.24(7)
- (13) S.24(3)
- (14) S.24(5)
- (15) S.24(6)
- (16) S.24(8)
- (17) S.24(9)
- (18) S.24(12)
- (19) S.24(11)
- (20) S.24(10)
- (21) S.26(2)
- (22) S.26(4)
- (23) The 62-1/2% shown in the equation is the percentage of average earnings used in 1938 for calculating compensation, the equivalent of the present 75%
- (24) S.26(4)