

Psychological Harassment, Bullying & Other Health & Safety Rights - Navigating WCB

Coquitlam SD – CUPE Local 561

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Nothing in this presentation supersedes the WCB Act. Legislation, Regulations and Policy. The information contained herein is not legal advice. Always ensure your Local and National Representative are contacted.

Ground Rules

- Good Morning – Fun Filled day of Passionate and Spirited discussions.
- Discussions will be guided by our Equity Statement.
- Confidentiality – What is said here, stays here.
- It becomes a lot more interesting when everyone participates.
- Understanding that you are not use to sitting for a full day, feel free to get up and move around – not leave.
- Turn off your phones – unless you have an emergency.
- Washroom/Emergency Exits/ Breaks/Lunch

You Have 4 Basic Rights

1. The Right to Know (Sec. 115 WCA, Reg. 4.30)
2. The Right to Participate (Sec. 116 WCA)
3. The Right to Refuse Unsafe Work (Reg. 3.12)
4. The Right to No Discrimination (Sec. 150 WCA)

Rights & Responsibilities

- General Duties of Employers (Sec 115, WCA)
- General Duties of Workers (Sec 116, WCA)
- General Duties of Supervisor (Sec 117, WCA)
- Employer to design and maintain an Occupational Health & Safety Program in the workplace

Accident/Incident Reporting

- 1. If required, employees must obtain first aid from a designated first aid attendant.
- 2. Employees must report all accidents and injuries to their supervisor immediately.
- 3. Injuries or accidents should be reported on a Form 6 or through Teleclaim (or internal)
 - Sec. 172 WCA

What kinds of Incidents are we talking about

In a School District we have a variety of incidents/ accidents that can occur, such as:

- Slips & Falls
- Confined Space issues
- Violence Issues
- Air Quality Issues
- Asbestos Issues
- Mould Issues
- Infectious Diseases

Why do we have to Report?

- Firstly, Reporting is **mandatory** by law and it is against the law for an Employer to prevent you from doing so.
- Secondly, if you don't report the incident, the problem will not be fixed and someone else can be injured or killed.

Why do we have to Report?(con't...)

- If a worker required medical treatment for an injury or there was no injury but there was the potential for a serious injury to a worker, the Employer **has to** investigate the incident (Sec. 173, WCA)
- It's clear in cases such as Janitorial/Maintenance slips and falls, but what about the Psychological injuries. How or why do we report those?

Why Should you Report Injuries?

- Although injuries seem insignificant to you today, they might manifest themselves at a later date and it will be difficult to prove that your injury sustained at that time or at that workplace was the contributing factor.
- Psychological injuries such as Bullying, Harassment, Intimidation, are now covered under BC legislation (Bill 14). These behaviors still contribute to an unsafe workplace and should be documented somewhere, i.e. diary and submission of Form 6 with or without time loss.

Bullying & Harassment

- Workplace Bullying & Harassment is a Health & Safety issue that can compromise the **Mental and Physical** Health & Safety of Workers. Employers must recognize these hazards, put prevention measures in place, and address incidents if they occur.

(WorksafeBC, November 1, 2013)

Bill 14 - Mental Disorder Claim

- Falls under Sec 5.1 of the WCA – Mental Disorder
- Has to be a reaction to one or more traumatic events arising out of and in the course of the workers employment, or
- Is predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of work related stressors, arising out of and in the course of the workers employment
- Is diagnosed by psychiatrist or psychologist under the DSM V
- Is not caused by a decision of the workers employer

Bill 14: What Has Changed?

- Section 5.1 now refers to “mental **disorders**” rather than “mental **stress**”:
 - Consistent with notion that stress not an illness, but a symptom.
- Section 5.1(1)(a)(i) – PTSD clause – broadened:
 - “acute” and “sudden and unexpected” removed.
 - Coverage now extends to a reaction to one or more traumatic events.

- 5.1(1)(a)(ii) – gradual onset stress added.
- The workers mental disorder must be diagnosed by a psychologist or psychiatrist:
 - Diagnosis by general practitioner no longer sufficient.
- Includes definition of psychiatrist.

Bill 14: What has Stayed the Same?

- Still require a DSM diagnosis:
 - DSM V released by APA May 2013.
 - Significantly different from DSM IV.
- Worksafe still able to review diagnosis.
- Still excludes decisions by employers relating to the workers' employment, including discipline, changes to position.

Section 5.1 - Test

- A worker will be compensated for a mental disorder if it:
 - Is a reaction to one or more traumatic events arising out of and in the course of the worker's employment; OR
 - Is predominantly caused by a significant work-related stressor or cumulative series of work-related stressors;

- Is diagnosed by a psychologist or psychiatrist as having a mental or physical condition described in the most recent version of the DSM (DSM V);
- Is not caused by a decision of the worker's employer relating to the worker's employment condition, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.

Proof of Mental Disorder

- Need more than simple diagnosis of mental disorder.
- Need medical report that also confirms:
 - Medical disorder is causally connected to traumatic event or workplace stressor;
 - Considers other possible contributing factors;
 - Concludes that: traumatic event(s) significant cause; or
 - BUT FOR work-related stressor(s), worker would not be disabled by a mental disorder.
- Letter to Dr. will be critical: must ask right questions.

Proof of “Identifiable” Incidents

- Item C3-13.00: Claimant must clearly identify the incident(s) that he alleges caused the PTSD or other mental disorder.
- Cannot simply assert, “I was harassed and bullied by my manager.”
- Board also requires proof of the incidents/conduct that worker alleges constitutes, e.g. harassment.

Objective or Subjective Test?

- Policy states it is the Board that decides whether something is “traumatic” or “stressful”.
- Which test will apply?
 - Objective
 - Subjective
 - Objective/Subjective

Pre-Existing Mental Disorders

- Policy 13.00, p. 6: “aggravation of a pre-existing mental disorder will be adjudicated under s.5.1 and this policy.”
- Will they be treated as another contributing cause?
- Will they be considered as part of “subjective element”?
- Or will the WCB assess the degree to which the condition has been aggravated and compensate to bring them back to where they were?

What is a “Traumatic Event”?

- “For the purposes of this policy, a traumatic event is an **emotionally shocking event, which is generally unusual and distinct from the duties and interpersonal relations of a worker’s employment.**”
- Does not exclude workers whose employment includes exposure to shocking events, e.g. ambulance drivers.

- In most cases, worker must suffer or witness event first hand.
- Typically, reaction to event is expected to be immediate.
- But, Policy recognizes that reaction may be delayed in some cases.

What is “Significant” Work-Related Stressor?

- Must be “excessive in its intensity and/or duration from what is experienced normally.
- Interpersonal conflicts with supervisors, co-workers not “significant” unless threatening or abusive.
- Only example of work-related stressor is bullying and harassment.
- What about inherently stressful jobs?

What is “Arising In The Course Of”?

- Item C3-13.00, at p. 4:
 - “This refers to whether the one or more traumatic events [or stressful incidents] happened at a time and place and **during an activity consistent with, and reasonably incidental to, the obligations and expectations of the worker’s employment.**
- Has to arise out of the performance of duties (not when worker stepped out to pick up dry-cleaning).

What is “Arising Out Of”?

- Relates to causal connection between traumatic event or work-related stressor, and the worker’s mental disorder.
- Is the worker’s mental disorder caused by his employment or was it caused by non-employment factors?
- If it is only a contributing cause, how significant a cause is it?

- Traumatic event and work-related stressors treated separately (and differently).
- Traumatic events have to be “more than trivial or insignificant cause of mental disorder.”
- In other words, must be significant cause.
- WCB will also consider whether any non-work-related medical conditions or events were a factor.

- Significant work-related stressors must be “predominant cause of the mental disorder.”
- “Predominant cause means that the significant work-related stressor, or cumulative series of significant work-related stressors, was the primary or main cause of the mental disorder.”
- Does this test meet the Charter requirements set out by the BCCA in *Plesner*?

Getting help with Mental Disorder WCB Claims

- Guides for Mental Disorder claims and the WCB Form 10D90 are on the CUPE BC OH&S website.
- Review the Guides before filling in the Form 6 and the Form 10D90!
- Where a claim or appeal is initiated, the Employer may get access to the WCB file including confidential medical files and evidence.

Managerial Exclusion

- S.5.1(1)(c) is not caused by a decision of the worker’s employer relating to the worker’s employment...
- WCAT 2012-02707 – must be an ER “decision”.
- ER conduct not captured?
- Is harassment by a manager “unusual and excessive”?
- What if the decisions themselves are an abuse of authority?

OH&S Bullying/Harassment Policies

- March 20, 2013, WCB adopted new workplace bullying and harassment policies:
 - D3-115-2 – ER Duties
 - D3-116-1 – Worker Duties
 - D3-117-2 – Supervisor Duties
- Included in WorkSafeBC Prevention Manual.
- Comes into Effect **November 1, 2013.**
- Serve as companion piece to Bill 14 amendments to section 5.1.

WCA Statutory Duties

- **Section 115 of WCA = Duties of Employers:**
 - (1) Every employer must
 - (a) ensure the health and safety of
 - (i) all workers working for that employer,
and
 - (ii) any other workers present at a workplace at which that employer's work is being carried out, and
 - (b) comply with this Part, the regulations and any applicable orders.
 - S.116 = duties of workers; s.117 = duties of supervisors.

Regulatory History

- 2004 – BC Workers Compensation Board amended Part 4 of the Occupational Health & Safety Regulation:
 - Sections 4.24-4.26 = no inappropriate activity or behaviour by “persons”, including workers;
 - Sections 4.27-4.31: Employers must conduct risk assessment/develop policies & procedures to prevent violence in the workplace.
- Did not include personal harassment, per se, just threats of physical violence made in conjunction with an assault.

D3-115-2 - Employer Duties

- Employer must take all reasonable steps to prevent ..., or otherwise minimize, workplace bullying and harassment.
- Definition:
 - (a) includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but

- (b) excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment.
- Reasonable Steps:
 - (a) develop a policy statement;
 - (b) take steps to prevent or minimize workplace bullying and harassment;
 - (c) develop and implement reporting procedures;

- (d) develop and implement procedures for “dealing with” (i.e. investigating) incidents or complaints;
 - (e) informing workers of policy;
 - (f) training supervisors;
 - (g) annual review of (a)-(d);
 - (h) not engaging in harassment;
 - (i) applying and complying with ER policies.
-
- Applies to a “person”, not just workers, e.g. clients, contractors, members of the public.

D3-116-1 - Workers Duties

- Section 116(1)(a) requires workers to take reasonable care to protect the health and safety of others...
- D3-116-1 further provides that workers must:
 - Not engage in bullying and harassment.
 - Report bullying and harassment to ER.
 - Apply and comply with ER policies and procedures on bullying and harassment.

D3-117-2 - Supervisor Duties

- Supervisors must take all reasonable steps to prevent or otherwise minimize workplace bullying and harassment of workers under their supervision.
- Reasonable steps are those that would be taken by a “reasonable person” as defined in Black’s Law Dictionary.
- Objective not subjective test.

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Company name

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Benefits Entitlement

What You Might Get

- Wage Loss Payments
 - Temporary Disability Benefits
 - Total or partial
- Health Care Benefits
- Vocational Rehabilitation Assistance
- Disability Benefits – **caution** – see Age 65 Guide
 - Permanent Disability Benefits
 - Total or partial
- Survivor and Death Benefits

Wage Rate & Earnings

- Wage Rate is the basis of most benefits initially, but “earnings” are the primary consideration.
- Since June 30, 2002, benefits are calculated on 90% of net average earnings.
- Income from **all** jobs can be included up to the WCB maximum, including acting pay, O.T., etc

Types of Wage Rates

- **Initial Wage Rate (Short term)**
 - Historically based on the time (10 weeks) most people take to return to work.
 - Average net earnings minus probable income tax, CPP contributions and EI premiums for first ten (10) weeks.
 - Exceptions are apprentices or learners, permanent employment for less than twelve (12) months, exceptional circumstances cases, exceptions for casual workers, POP, or no earnings.

Types of Wage Rates

(continued)

- **Permanent Disability Wage Rate**
 - Rate used to calculate disability pension
(Disability Awards will use ten (10) week rate)
- **Reopening Wage Rate**
 - Less than three (3) yrs – ten (10) week rate; greater than three (3) yrs – reopening earnings



Health Care Benefits

- Chiropractor, dentist, doctor or specialist
- Physical therapist, massage therapist, naturopath
- Hospital, laboratory, X-ray services
- Nursing care
- Personal-care assistance
- Prescription drugs
- Medical supplies, appliances, hearing aids, glasses, dentures, medical equipment
- Home, vehicle or workplace modifications

Health Care Benefits

(continued)

- Must get approved in advance for each of these services



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law

legislation /lɪ'gɪslætʃn/
laws, written by
Parliament and
the gove

What Legislation Exists Cont'd?

- Collective Agreement language
- Section 12 of the BC Labour Relations Code
- WorkSafeBC legislation and policy:
 - ❑ Section 5.1 of the *Workers Compensation Act*
 - ❑ C3-13.00 of RSCM II Policy
 - ❑ C3-3 of the Practice Directives
 - ❑ D3-115-2 of the Prevention Manual
 - ❑ GD3-115(1) - 3 of the Occupational Health and Safety Guidelines

Do you know which applies?

What is a RTW Plan?

- ❖ Can be formal, informal or part of a multi-party process.
- ❖ Goal is to return employee back to work part time or full time.
- ❖ Can start from the first day after injury or years later.
- ❖ Can be part of a Duty to Accommodate.
- ❖ Can be done by the Employer, WCB or LTD.

What is a RTW Plan Cont'd?

- ❖ Usually starts when an employee's condition stabilizes. Employers often start sooner.
- ❖ Case by case – fact pattern dependent.
- ❖ Is governed by the forum you are using, but **ALWAYS** must consider the Collective Agreement.



When is a RTW Required?

- Is never formally “required” unless the insurance carrier, WCB, employee or Employer via WCB insist on it.
- Employers may request a RTW under the WCB RSCM II Selective / Light Employment Policy.
- RTWs can arise out of WCB claims, ICBC claims, sick leave, chronic illnesses, Chronic Pain, LTD claims and Duty to Accommodate (“DTA”) situations.
- An LTD carrier may have very different Plan policies i.e. 2 year definition for return to employment, than WCB Policy or Collective Agreement language.
- RTWs are most often initiated by WCB and LTD.



When is a RTW Required Cont'd?

- Employers, Co-Workers and the Union may notice changes in:
 - Physical health
 - Quality of work
 - Amount of socialization
 - Tardiness or absenteeism
 - Personal appearance
 - Anxiety
 - Tearfulness
 - Reaction to changes in workload or new duties

Who Participates?

- Who participates depends on numerous factors, such as:
 - Type of absence e.g. WCB vs. sick leave
 - Presence of a DTA?
 - Unionized or non-Unionized environment
 - Wording of Collective Agreement language



Who Participates? (Continued)

- Employee
- Union (if it is a unionized workplace)
- Human Resources
- WCB, as applicable
- Employee's supervisor, as applicable (and subject to the need for maintaining strict confidentiality and privacy)

Questions to be Asked

- Is this a WCB claim related RTW? Are they involved?
- Are there overlapping DTA issues?
- Is there a Collective Agreement that applies?
- Are there different requirements for sick leave, short term disability, medium term disability, long term disability, WC, CPP, EI Sick Leave, OH&S issues, safety issues, Duty to Accommodate, etc. **Each case is unique!**



Questions to be Asked (Continued)

- How do we protect employee privacy?
- How do we get the best medical evidence?
- What is the RTW Plan? Where are we in six (6) months or a year? Is there a plan?
- Does the Employer have multiple job descriptions for RTWs already prepared?
- Has a Job Demands Analysis or Functional Capacity Evaluation been done?

Questions to be Asked (Continued)

- Are employees aware that there is a RTW plan available?
- Who is offering the best RTW plan?
- Does it comply with the Collective Agreement?
- Is the Union involved at every stage?
- What is the disability management contract provider's involvement?



Restrictions vs. Limitations

- **Restrictions** are duties that should not be performed.
- **Limitations** are tasks that cannot be performed.
- **Capabilities** are tasks that can be performed.
- These need to be reviewed every 30 days
- If no full return to work after 30 days, is a case management meeting needed?



“Life itself is the most wonderful fairy tale.”

- Hans Christian Andersen

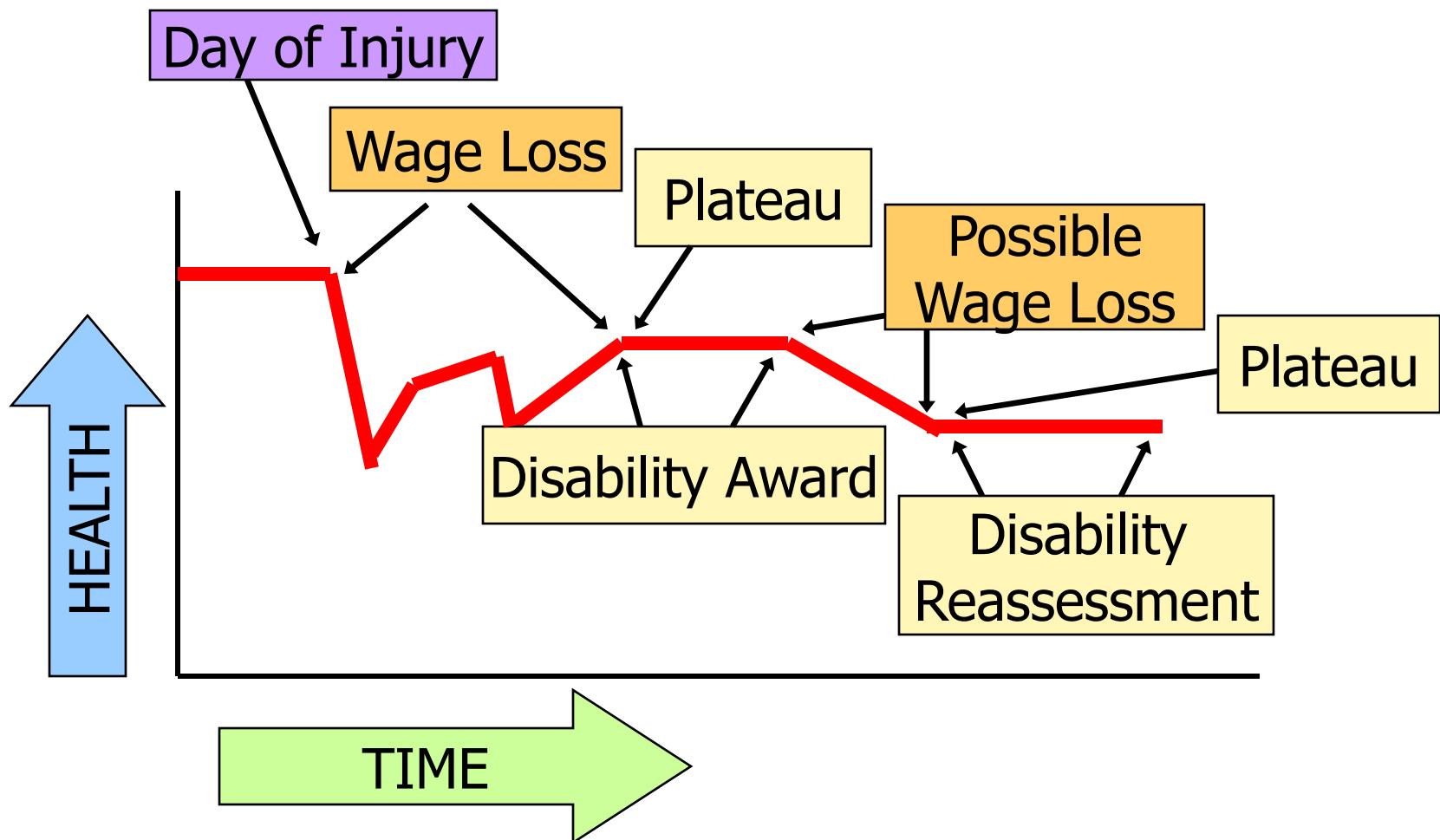
Restrictions vs. Limitations (Continued)

- While the WCB looks primarily at limitations, both need to be addressed.
- Both subjective and objective evidence should be included in the assessment and equal weight afforded to each.
- Multiple psychiatric opinions may be needed.



Disability is **NOT** Inability

Life of a WCB Claim - Where Does RTW Fit In?



Life of a Claim - Where Does RTW Fit In?

- A RTW can occur anywhere in the lifecycle of a WCB claim.
- What if an employee is receiving Vocational Rehabilitation (“VR”) by the WCB?
- Does the Employer still have to act?



A photograph of a "WORK INJURY CLAIM FORM" lying on a wooden surface. The form has a blue header section with the title "WORK INJURY CLAIM FORM". A pair of black-rimmed glasses rests on the top left corner of the form. A black pen with a silver clip lies diagonally across the middle of the form. The form itself is white with blue header and footer sections. The main body contains several fields for personal details, address, and gender.

1 WORKER'S PERSONAL DETAILS

Title Family Name
[Title] [Family Name]

Given names
[Given names]

Other known or previous legal names eg Maiden name
[Other names]

Date of birth Gender
[Date of birth] / [Gender] Male Female

What area of the work you were doing in when you were injured?
[Area of work]

What is the street address where the incident occurred?
[Street address]

Suburb
[Suburb]

State
[State]

What if WCB Sponsored Vocational Rehabilitation is Occurring?

- VR is not a bar to RTW programs occurring. They should be coordinated though.
- Phase 1 is the most common time when RTW occur.
- Make sure the Union and Employer are involved.



5 Steps to the Vocational Rehabilitation Process - At What Stage Can An RTW Commence?

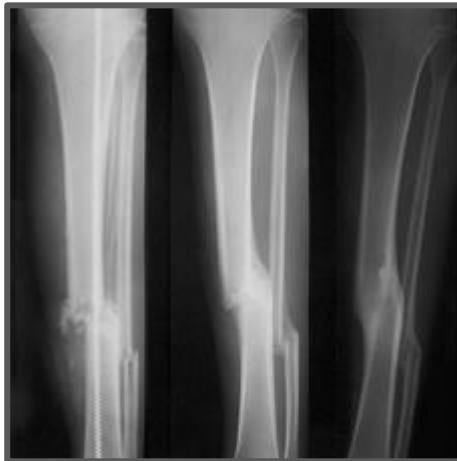
Phase 1 – return to same job with same employer

Phase 2 – modified or different job, same employer

Phase 3 – different job, new employer, same industry

Phase 4 – different job, new employer, all industries

Phase 5 – consider new occupational skill development



Obtaining Medical Evidence - What is Needed?

Employers often request medical evidence for:

1. An authorization for paid or unpaid sick leave
e.g. EI Sick Benefits or Collective Agreement obligations.
2. To determine eligibility for income replacement.
3. For DTA processes, RTW programs,
4. To ensure the safety of employees.
5. To address addictions or mental disorder issues.

Obtaining Medical Evidence - What is Needed?

- ❖ Where the Employer has **reasonable** grounds, they **may** ask for **progressively** more detailed information. The test is what is “**reasonably necessary**”.
- ❖ “reasonably necessary” is determined using a matching analysis.
- ❖ It changes depending upon the circumstances e.g. sick leave versus duty to accommodate.
- ❖ Open access to employee information should not occur.

Privacy, privacy, privacy!

Obtaining Medical Evidence - What is Needed?

- **Diagnosis?**
- ✓ May be required for DTA and RTW
- ✓ Safety issues is another exception.
- ✓ Each case will be determined upon its facts and what the Collective Agreement states. **Read your Collective Agreement. Talk to your National Representative. Investigate facts.**



Obtaining Medical Evidence - What is Needed?

- **Prognosis?**
- ✓ Employers are often entitled to a general prognosis such as the expected date of return to work.
- ✓ Balancing act between the privacy interests and the Employer's legitimate interest . The key term is “reasonably necessary”.

Obtaining Medical Evidence - What is Needed?

- **Treatment?**

- ✓ The details of treatment **may** have to be disclosed later, **but not initially**.
- ✓ **Balancing** between the employee's **privacy** and the Employer's **legitimate** operational concerns.
- ✓ It is not the Employer's role to dictate what the treatment should be in RTW.
- ✓ Employers should not contact the employee's physician.

RTW and Independent Medical Evaluations (“IMEs”)

- The use of IMEs should be extremely limited. In BC, Employers are increasingly attempting to use IMEs.
- More common for mental disorders and addiction issues.
- Can be very invasive and detailed.
- The worker should have the choice of their physician, not an insurer or Employer.
- IMEs negatively impact privacy.

RTW and Independent Medical Evaluations (“IMEs”) Cont’d

- IMEs must always take employee privacy into account; there has to be a **balancing of privacy interests**.
- A refusal to participate in an IME may result in a paid or unpaid suspension.
- Where a threat of violence exists, a Violence Threat Assessment may be required.
- Always contact your National Representative where an Employer requests an IME.



Forms & Releases - What Can Be Used?

- ❑ Consulting companies are now being used by Employers. The goal includes reducing sick leave, reducing or shortening claims and getting employees back to work sooner.
- ❑ Consultants often ask employees to sign very general, broad Releases or Forms which sign away the privacy rights of employees.
- ❑ Releases and Forms should be reviewed by the National Representative before being signed.
- ❑ Employers should not send forms or Releases to physicians, barring Collective Agreement language.
- ❑ There should not be direct contact between the Employer, the Employer's consultant and the employee's physicians.



Forms & Releases - What Can Be Used?

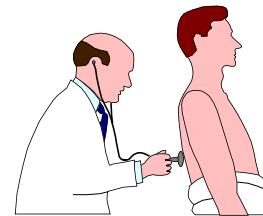
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- Physician Chart Notes should not be given to the Employer or their consultant. Chart notes should have all non-relevant information redacted / removed / blacked out. **Relevance is a key consideration.**
- There should not be distribution or disclosure of information to third parties. Releases often allow for this. Define “third party”.
- Forms and Releases should be time limited.
- Forms and Releases should not be general in nature.
- Past medical history should not be disclosed generally.
- Forms and Releases should comply with the Collective Agreement.
- Forms and Releases should be vetted by the National Representative.



Obtaining Medical Evidence - Role of Union Advocates

- When corresponding with the physicians, include an authorization form signed by worker.
- Include the worker's name and WCB claim number as applicable.
- Identify yourself.
- Clearly explain the issue(s) and why the opinion is required. The letter may be sought by the Employer in an arbitration.
- **Know which forum you are acting in!**



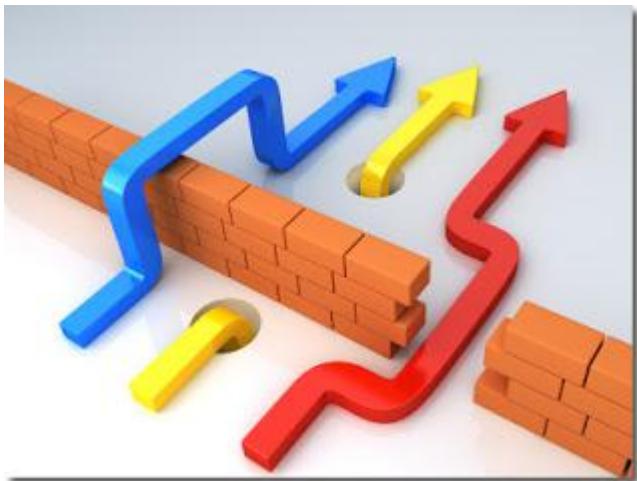
Obtaining Medical Evidence

Cont'd

- Provide a brief background. Outline issues.
- List questions.
- Attach relevant medical reports.
- Confirm price and method of payment.
- Thank the practitioner in advance.
- Physicians cannot act as advocates.

PRIVACY, PRIVACY, PRIVACY!





Key Barriers to the RTW Process

*Stigma – 50% of Employers would refuse to hire a person
with a mental disorder*

Fear of re-injury

Presence of sufficient medical information

Presence and quality of alternative duties

Supervisor buy in

Co-worker buy in

Morale in general

Size of Employer

Key Barriers to the RTW Process

- The overlap of multiple processes:
 - WCB Discriminatory action
 - WCB Prevention
 - WCB Claims
 - Human Rights
 - Collective Agreement
 - LTD
 - Employment Insurance
- Conflicting medical evidence

Key Barriers to the RTW Process

- Attendance Management Programs – these often compel early / premature return to work (CUPE AMP materials / courses are available through the Education Department).
- Privacy concerns – 25% of WCB mental disorder claims are suspended due to employee concerns over privacy
- Secondary conditions (comorbidities) often go unrecognized and delay return to work.



RTW and Forced Participation

- Workers are at risk of re-injury, secondary absences and new claims where they are forced to participate in a RTW.
- Insurance carriers can compel RTW prematurely as they can terminate benefits. **Remember which forum you are in. There may be several.**
- 13% of workers had a second absence when forced to participate in a RTW.



RTW and Forced Participation Cont'd

- Employees can be forced back to work under the WCB RSCM II Selective / Light Employment Policy.
- Commonly used by Employers now i.e. Air Canada
- Here are some defenses:
 - The wording of the Policy is “generally”.
 - The diagnosis may not be known or confirmed.
 - Further testing may be needed.
 - The limitations, restrictions and abilities may not be known.
 - Within “reasonable” “limits” the worker must agree to the arrangement.



RTW and Forced Participation Cont'd

- The RTW arrangement is not time defined.
- The work must be safe.
- The work must not slow recovery.
- The work must not harm the employee.
- The arrangement is not a one time event and is subject to review. Multiple RTWs may have to occur.
- The arrangement occurs / may occur along with DTA obligations. They are not mutually exclusive.
- Careful of re-injuries – may mean a whole new claim or RTW plan.

RTW & Factors for Success

- Having the right people present
- Ensuring **privacy**
- Identifying **medically appropriate job duties**
- Knowing the employee's **changing** restrictions, limitations and capabilities
- Having **ongoing** sufficient medical evidence
- Physician's **familiarity with the proposed job duties and old job duties**
- **Quality and extent of ongoing communications**
- Knowing your role as a Union representative – **what forum(s) are you in at each stage?**



Criteria for Acceptance

A. In the Course of Employment – Factors and Questions

1. Did the claim/incident/injury occur at a time consistent when employed?
2. Did the claim/incident/injury occur at a place consistent with employment?
3. Did the claim/incident/injury occur during an activity consistent with employment?



Criteria for Acceptance

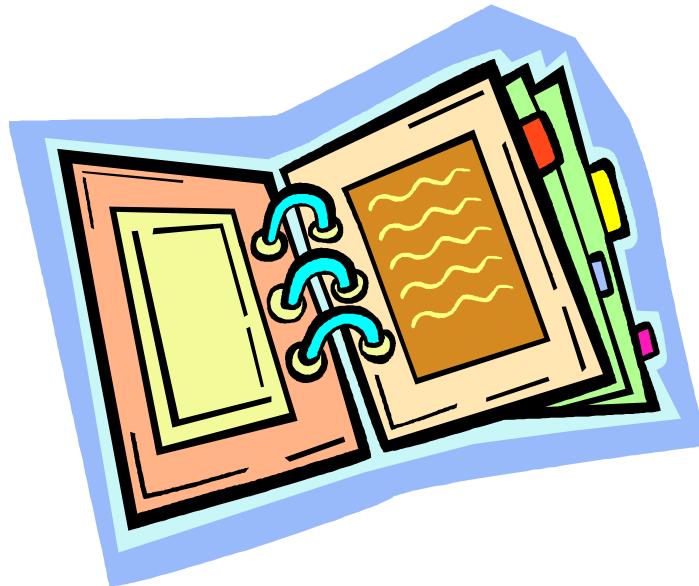
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B. Arising Out of Employment – Factors and Questions

- Was the claim/incident/injury caused by the employment?
- Cause of injury must be related to employment (legal).
- Work activities should have a *medically significant* contribution.
- Balance of possibilities (s.99)
- Presumption (#14.10)

Group Activity

- Sample pre-written scenarios.
- What is employment related? What is not?





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What Injuries Must Be Reported?

- Report **all** injuries.

Employers must report if:

- The worker is transported or directed to a place of medical treatment by the employer.
- The injury obviously requires medical treatment or worker lost consciousness.
- The worker states an intention to seek treatment.

What Injuries Must Be Reported?

(continued)

- The worker has received treatment for the injury.
- The worker is, or claims to be, unable to return to their usual job.
- If a prosthesis, eyeglasses, dentures or hearing aid is broken in an accident.
- If the Board or the worker requests a report.

Question & Answer Period



Workers' Compensation

Filing a Claim



Points for Injured Workers

- Get immediate first aid / see doctor.
- Document personal injury/occupational disease in first aid book.
- Report any personal injury/occupational disease as soon as practicable (**same day**).
- Fill out the Form 6.
- Review the WCB Guides.

Points for Injured Workers

(continued)

- The most important Policy is 14.00 and 5(4) – Arising Out of and in the Course of Employment.
- It is frequently misapplied by the WCB. If there is an accident, you do not have to show anything else e.g. that something unusual, unaccustomed or out of the ordinary occurred. The WCB frequently ignores this though.

Points for Injured Workers (continued)

- Currently, it takes 17 days from the day of injury to the first payment in basic claims.
- Pensions / Disability awards can take up to two (2) years.
- Re-Openings can take six (6) months.



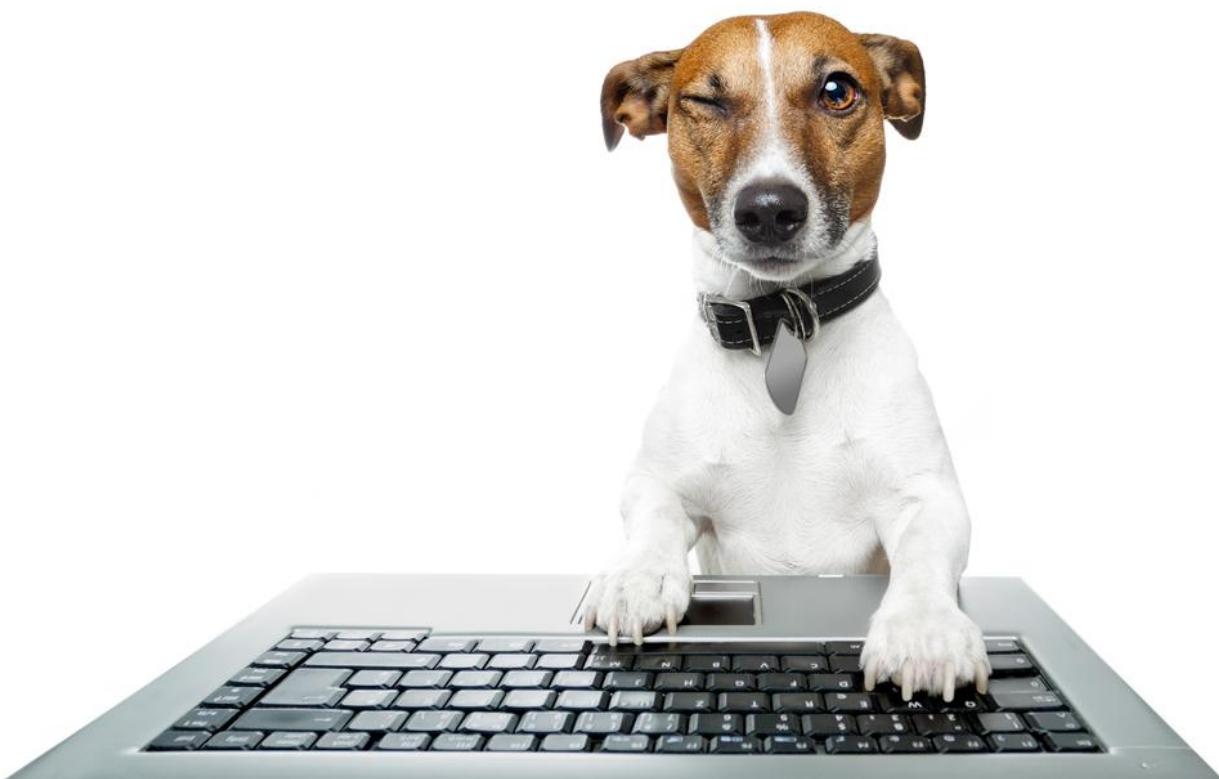


Cannot Waive Compensation

- Worker and employer cannot agree to forego any compensation benefits (s.13)
- Employer cannot deduct from wages, or require worker to contribute toward cost of compensation (s.14)
- Employer or supervisor must not prevent or discourage reporting injuries (s.177)
 - By threat, promise, inducement, or persuasion

Standard WCB Forms

- **Form 6** – Worker’s Application for Compensation
- **Teleclaim Application** – **Caution**
- **Form 6A** – Worker’s report of injury to employer
- **Form 7** – Employer
- **Form 7A** – First Aid
- **Form 8** – Doctor or **Form 8C** – Chiropractor
 - Reports of first visits
- **Form 11** – Doctor’s progress report



Form 6: Details from the Worker

- Date and time of injury
- When injury was first reported to employer
(Lines 1, 2 & 3)
- What happened to cause the injury?
(Line 4) - **KEY**
- State **all** injuries and symptoms (Line 6)
- Loss of time from work beyond the day of
injury? Other jobs? (Line 7)

Form 6: Preventing Problems

- Accuracy of date and time of injury
- Details of exposure
- Details of *all* injuries
- Clear description of what happened to cause the injury



WCB Forms - Form 6

- WCB Adjudicators often investigate the following (Please advise your members accordingly):
 - The details/facts of how the accident happened.
 - Was there something unusual, unaccustomed or out of the ordinary (KEY)? This is the most important factor and often forms the basis for denied claims and appeals where absent.
 - The names of all co-workers who witnessed the accident.
 - The nature of the disability.

WCB Forms - Form 6

- The extent of the injury and all (KEY) body parts that were injured.
- Has there been a previous injury to the body part(s) involved in this accident?
- A review of all prior injuries – work, vehicular, recreational, etc.
- Verification of all information on the Employer's First Report of Injury.
- A description of the employee's job duties.
- The employee's job title.



WCB Forms - Form 6

- The equipment or tools involved in the work at the time of the injury.
- The experience level of the employee – how long on the job, and prior experience in the same type of work with other employers.
- Confirmation of lost time.
- The availability of modified duty work.
- The identification of all medical providers for the injury.
- The type of medical care being provided.

WCB Forms - Form 6

- The nature of any pre-existing medical conditions (KEY) – obesity, diabetes, etc.
- Any concurrent treatment with pre-existing medical conditions.

CUPE has created a Form 6 and Form 8 /11 Guide.
These are on the CUPE BC OH&S website.

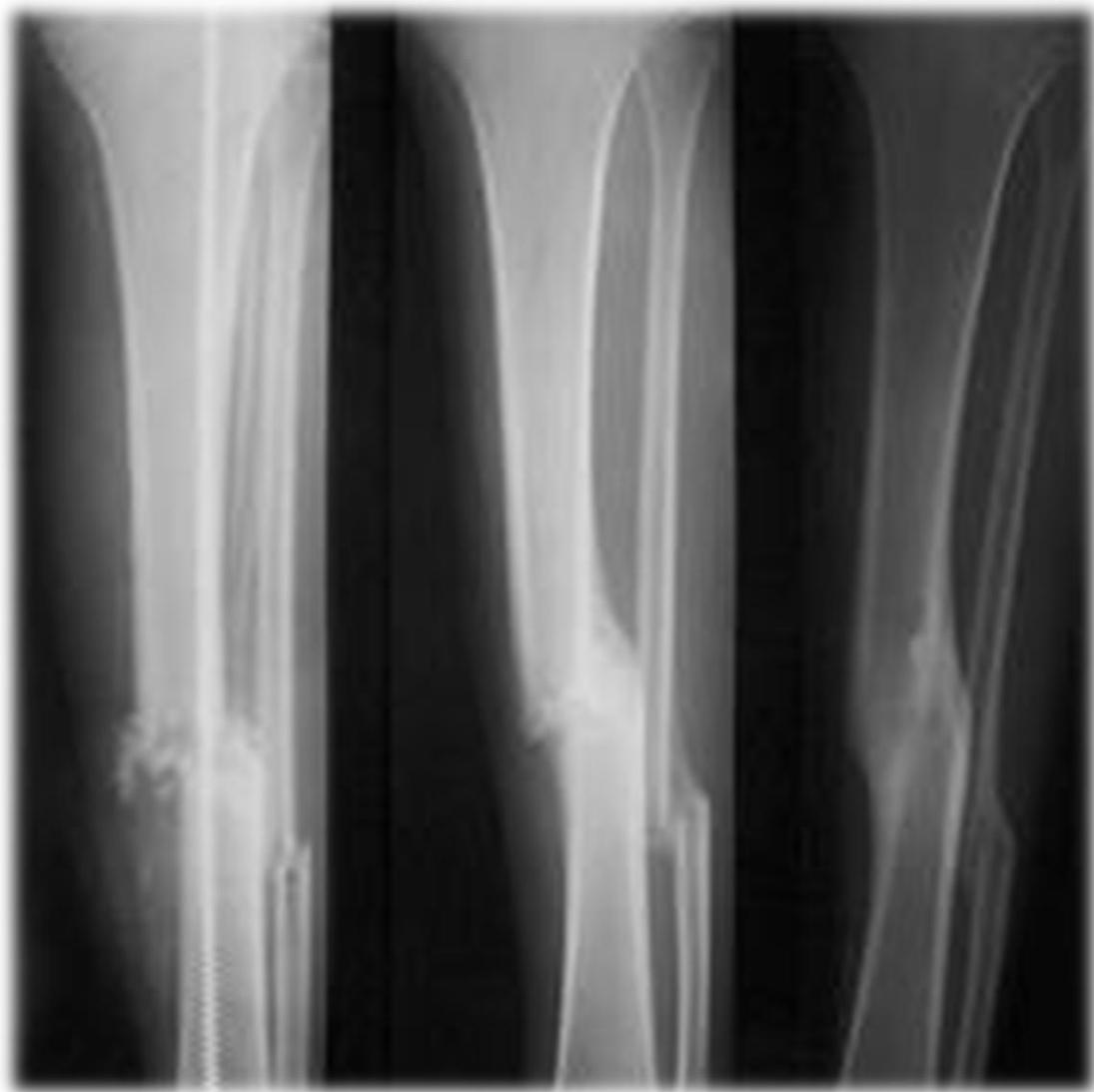


Form 6A: Worker's Report to the Employer

- If worker receives this form, or an equivalent form, it must be completed to ensure receipt of benefits.
- It is different than a Form 6.
- Does not have to be sent to WCB.

Form 7: Employer's Report

- Employer's report of injury/disease
- *Act* requires Form 7 to be completed within three (3) days of reporting of accident but WCB allows seven (7) days. This is 3 WCB business days (Monday to Friday).
- There is no longer a “Form 7 – First Aid Attendant’s Report”.



Form 8/11: Physician's Report

- Doctor's first report.
- Completed by doctor after first examination of injury/occupational disease.
- Should be provided to the Board within three (3) days of attending first appointment.
- Rates for a physician's pay are higher for WCB claims (30%) – Normally, when a physician is seen (non WCB) it is \$37.50.

Form 8/11: Doctor's Report (continued)

- Worker's statement of what happened
- Presenting complaint(s) and **all** diagnoses.
- Ability to Work – **exercise caution!**
 - Date first disabled (Doctor's opinion)
 - When fit to return to work (Doctor's estimate)
 - Can worker do alternative light or part-time work?





Advanced - Reconsiderations

- A pre-appeal internal WCB step.
- Not used due to low success rate.
- WCB has **75 days** to initiate a review to correct errors or change decisions.
 - WCB can change a decision at any time if fraud or misrepresentation is discovered (subject to approval).



Reasons for Denied Initial Claims

- **Delayed reporting** to employer or doctor
- Different descriptions of the accident on the various Forms
- Injury/exposure did not happen at work
- Injury/exposure was not caused by work

Reasons for Denied Claims

(continued)

- Nothing unusual, unaccustomed, or out of the ordinary – this is an incorrect test but often applied. Challenge it under 5 (4).
- Only an accident is needed. Nothing else. Presumption is automatically met when there is an accident e.g. a fall for no apparent reason. Nothing is needed that caused the fall – that is the correct test.

Reasons for Denied Claims

(continued)

- It is a breach of Policy 99.10 where an employer has protested a claim and the worker is not contacted by the WCB before a final decision is made on a claim.
- Workers should argue there was a failure to investigate.

Appealing WCB Decisions



Review Division - First Level of Appeal (of 2 Main Levels)

- A Department of WCB – not independent
- Reviews are decided by Review Officers
- Bound by law and by policy
- Deadline for completion (**150 days**)

Review Division

Who Can Request a Review?

- A Worker
- An Employer
- A deceased worker's dependant
- A Representative, if has a signed authorization from appellant

To find the status of a review, enter the review number below and click the view status button.

Search by

Review Number: **View Status**

Life cycle of a review

The following is an overview of the life cycle of a Request for Review. For details about the review process, please refer to the [Review Division Practices and Procedures](#)

1. A request for review is submitted to WorkSafeBC's Review Division.

↓

2. The request is **registered** as received and assigned a number.

or

If the request is submitted late - after the 90 day deadline - along with a request for an extension of time, the request for review will be **registered, late**. If the request for an extension of time is accepted, the request for review will be **registered**. If the request for an extension is denied, the review will not be conducted and the status will be changed to **not accepted**.

↓

Connect:
Contact the Review Division
Phone 604-214-5411
Toll-free 1-888-922-8804

Review Division

What Can Be Reviewed?

- Decisions made on individual compensation, prevention and assessment matters **EXCEPT:**
 - (a) Applications for the reopening of claims,
 - (b) Discriminatory action complaints,
appealable directly to WCAT.



Review Division

How to Request a Review

- File **within 90 calendar days** of decision
- Must be in writing or use RD form
- One (1) decision per form
- Give reasons for disagreement
- State remedy
- Provide a one (1) page summary of arguments with the submission

Review Division

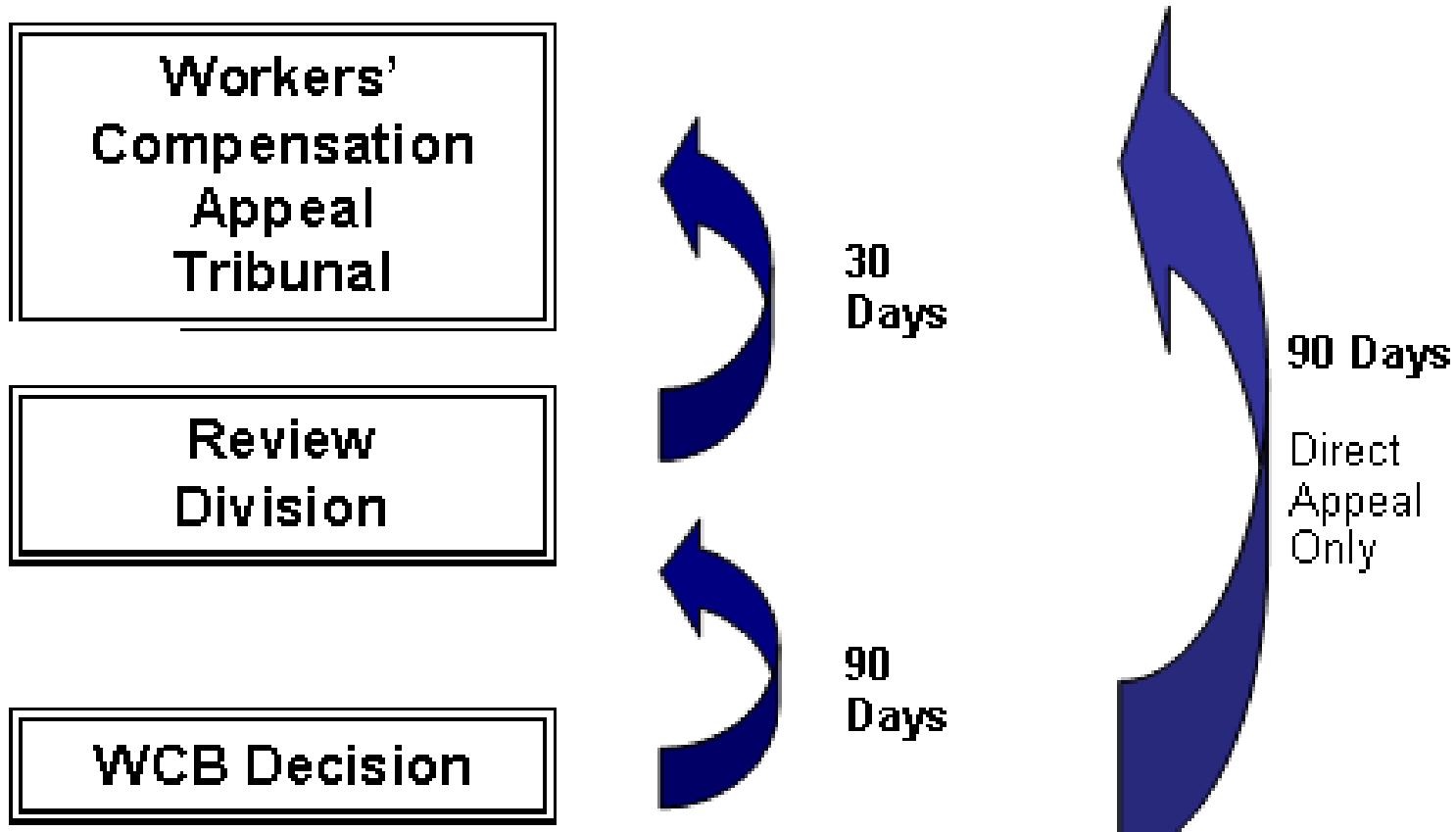
How To Request a Review

- The Review Officer or the Appellant may call to request or provide additional information
- Review Officers are being encouraged to contact Appellants to obtain information and clarify issues
- Most Review Officers (almost all) are lawyers

After the Decision

If the Review/Appeal is Denied:

- You must determine if you should or if you can appeal to the next level.
- Remember appeal deadlines –
30 days to appeal to WCAT.
- Review Officers now rate Case Manager decisions during the appeal process.



After the Decision (continued)

If the Review/Appeal is Allowed:

- The worker's file will be returned to WCB for implementation.
- Follow up to ensure implementation is satisfactory.
- Errors? Omissions? Next Steps? New Decisions Needed?

WCAT - 2nd Level of Appeal

Who May Appeal?

- Workers
- Employers
- Dependents of deceased workers
- Representatives may initiate, but appellant has to sign WCAT form within 21 days or will be abandoned

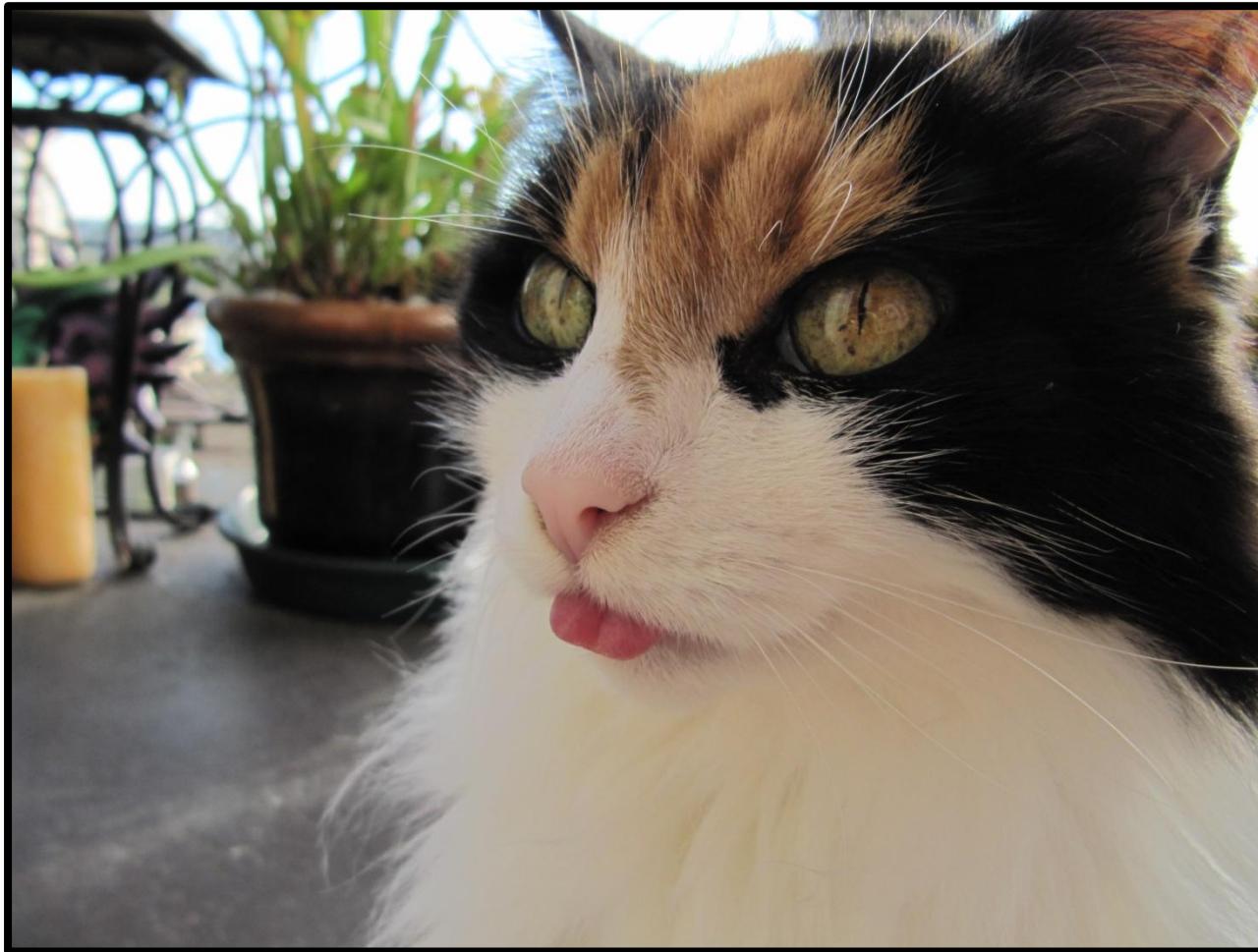


What is **MY CASE** Worth?

WCAT - **What** Decisions Can BeAppealed?

Any Decision Except:

- A decision under S.16 of the *Act* (Vocational)
- Commutation decision (Disability Award)
- Disability Award - Permanent Disability Evaluation Schedule where range is 5% or less (usually – there are exceptions)
- Preliminary or Procedural decisions



WCAT - **How to Appeal?**

Notice of Appeal Must:

- Be received within 30 calendar days
- Can be in writing or use WCAT form
- Identify the decision
- State why the decision is incorrect
- Give the outcome you would like (remedy)

After a Decision Where to Next



Advanced - Getting New Decisions - When and Why?

- Secondary issues such as sequelae/secondary conditions have arisen or been diagnosed.
- Injuries out of treatment or rehabilitation have occurred.
- Pensionable conditions have worsened or changed.
- The WCAT or Review Division have stated that it is necessary to get a new decision.



Advanced - Other Processes

- Should the appeal go to Review Division Reconsideration? (Limited to certain matters only).
- Should the appeal go to WCAT Reconsideration?
- Petition for Judicial Review after the Review Division decision?
- Petition for Judicial Review within **60 days** of the date of the WCAT decision?

WCB Advocacy and Section 12 of the BC Labour Relations Code

- Unions **do not** have to represent members in WCB appeals.
- Therefore, Section 12 does not normally apply, even where a Union does decide to represent members in WCB appeals. **Unions can be sued however.**
- The BC Labour Relations Board has made numerous decisions on this matter.



Search Entire LRB Website

Search

**Welcome to the Labour Relations Board -
British Columbia web site**

The BC Labour Relations Board is an independent, administrative tribunal with the mandate to mediate and adjudicate employment and labour relations matters related to unionized workplaces.

The *Labour Relations Code* (the "Code") governs all aspects of collective bargaining amongst the provincially-regulated employers and employees. This includes the acquisition of collective bargaining rights, the process of collective bargaining, the settlement and regulation of disputes in both the public and private sectors, and the regulation of the representation of persons by their bargaining agents.

Important Information:

Applications, submissions or other documents received by the Board after 4:00 p.m. will be treated as if received at 8:00 a.m. the next business day, unless special arrangements have been made in advance with the Registrar, Deputy Registrar or Case Administrator.

The "[Contact Us](#)" link sets out various ways to contact the Labour Relations Board.

The "[About Us](#)" link provides general administrative information of the Labour Relations Board.

Career Opportunities Code

Code Guide Collective Agreements Decisions Forms Information

Bulletins > Mediation

Services > Practice

Guidelines > Regulation Reports Rules Schedules

WCB Advocacy and Section 12 (continued)

Leave for Reconsideration of BCLR No. **B110/2001 – para. 16**

“This Board has repeatedly found that a union is generally not *obliged by the duty* of fair representation to assist or represent an employee with respect to matters that do not arise under a collective agreement: see, for example, *Gustav Gonske*, BCLR No. B249/93 (WCB appeal); *David Askey*, BCLR No. B337/2000 (*civil action against LTD insurer*)...”



WCB Advocacy and Section 12 (continued)

In BCLRB No. B327/2004, para. 11 and 12:

“Brar’s proposition that once a union decides to take on a WCB case on behalf of a member, then there is a responsibility and an obligation to do so in an appropriate manner was specifically answered in Smith, (para. 30): ‘...we conclude that Section 12 does not apply to matters outside a union’s exclusive bargaining agency, and that this is not altered by the fact that a union has chosen to act in relation to such matters.’”

Do We Have To Do WCB Appeals?

If we choose to do things which are outside of our statutory obligation, **we will be responsible for any error we make that constitutes simple negligence.**

We have liability for errors we make that are outside of those things we are not required by statute to do.



Do We Have To Do WCB Appeals? (continued)

Always advise members (as per the Waiver):

“I am a lay advocate; I am volunteering my services for you. You can use the Workers’ Advisers Office for free or a lawyer, or other advocate, at your own cost. If I am assisting you - I am not ‘representing’ you - therefore, do not list my name as your Representative.”

BC Workers Advisors Office

- The B.C. Workers Advisors are a tax payer funded, Ministry of Labour appointed advisors office where free, expert assistance with WCB claims and appeals is provided on selected files (not all files).
- A Workers' Adviser can:
 - help you understand WCB policies and procedures
 - provide you or anyone else who is helping you with information about your claim
 - help you appeal a WCB decision, and in some cases represent you during an appeal.

BC Workers Advisors Office

- Here is their website:

<http://www.labour.gov.bc.ca/wab/pubs/brochures.htm>

- **Vancouver / Lower Mainland**

- 500 - 8100 Granville Avenue
Richmond, BC V6Y 3T6

Tel: 604 713-0360

Fax: 604 713-0311

Toll Free: 1 800 663-4261

- 204 - 32555 Simon Ave



Employer Requests for Information

- During the claim and appeal process, the employer and WCB are subject to FOIPPA.
- Privacy is everything, especially in Mental Disorder claims.
- Employer's have access to WC claim files **during the appeal process** and Vocational Rehabilitation process.

Dealing with Employer Consultants

- There has been an increase in the use of consultants for WorkSafeBC (“WCB”) claims and appeals arising in workplaces as employers attempt to control costs associated with health care, extended health benefits, WCB claims and absences due to illness and injury.
- Employers may also utilize the Employers’ Advisers Office (“EAO”).
- Cooperation depends on the forum and many other factors.



Dealing with Employer Consultants

- See the CUPE Guide “Canadian Union of Public Employees Guide to WorkSafeBC Claims, Appeals and Employers’ Use of Consultants”
- Contact your National Representative via your Local President.
- Do not participate in any meetings without the designated officer or representative of the Local.
- Be cautious about what information is disclosed or stated. You are not under any obligation to speak to your employer or their consultant regarding a WCB appeal.



Dealing with Employer Consultants

- If you are questioned regarding a WCB claim, contact your Local and your Union Occupational Health & Safety representative immediately.
- Take detailed notes, via a diary or journal, of any discussions, meetings, emails, letters or telephone calls that occur. Copy your Local on these.
- Ask who the consultant is and who they represent, in writing.
- Ask what their mandate is.

Dealing with Employer Consultants

- Ask if they have been contracted to deal with your WCB claim (or appeal) or the employer in general.
- Ask your employer what the consultant's involvement is, why, expected duration, process for protecting personal information, and the process for adhering to the Freedom of Information and Protection of Privacy legislation and WCB policy (see http://www.worksafebc.com/regulation_and_policy/legislation_and_regulation/fipp/default.asp)
- Do not sign any Releases, Consent Forms, forms or paperwork until it is vetted by your Local, recognizing that time lines may be in place that could affect your WCB claim or appeal.



Dealing with Employer Consultants

- Advise your physician(s) or other treatment providers that a consultant may attempt to contact them and they do not have authorization to discuss your medical history, the WCB claim, et ceteras.
- Be careful of any statements that indicate you may get expedited treatment or testing if you agree to the consultant's involvement or you participate.
- Ensure your physicians are fully aware of and up to date on both your limitations and restrictions.



WCB Surveillance

- Under section 96 of the *Workers Compensation Act* (the “Act”), WorkSafeBC is given the authority to both investigate and adjudicate claims for compensation. In performing these functions, WorkSafeBC operates on an inquiry basis which means that it is responsible for continuing to inquire until there is enough evidence to make a decision. It is the WorkSafeBC officer’s job to gather and receive evidence to make those decisions.
- See **PRACTICE DIRECTIVE # C12-7**

WCB Surveillance

Where benefits are being paid or requested on a claim, the following factors are considered before making or approving a request for surveillance:

- Whether there is inconsistent presentation by the worker relative to what would be expected for the injury;
- Whether the worker's previous claims history/previous investigations indicate prior misrepresentation or violations;



WCB Surveillance

- Whether there are suspicious claim circumstances (i.e., difficult to contact, background noise on phone indicates working, conflicting information, etc.)
- Whether there is credible information from the TIPS line or other sources suggesting misrepresentation or fraud; and
- Whether there is evidence of risk of self-harm or psychological conditions that may be exacerbated by WorkSafeBC conducting surveillance.

WCB Surveillance

- Surveillance is authorized only when conducted from a public vantage point, in circumstances where the person being investigated is not in a place where they would have a reasonable expectation of privacy;
- Recordings often occur for several days (3), usually separated by short gaps i.e. a day or two. The recording time is variable i.e. 30 minutes to 4 hours.



WCB Surveillance

- Sometimes WorkSafeBC receives non-print evidence such as photos, videotapes, audio tapes, or clothing from employers and their representatives.
- Where the evidence has been requested by WorkSafeBC, the officer determines whether the evidence should be placed on the claim file, taking into account the accuracy, relevancy and sensitivity of the evidence (see *Section D Treatment of Surveillance Results*).