



WCB Advocacy Training Basic CUPE Airline Division

Presented by: Tom McKenna, CUPE National Representative
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Format of Course

- This is an introduction to Workers' Compensation ("WCB") in British Columbia for lay persons with little or no experience filing WCB claims or appeals.



Unions & WCB

- WCB Advocacy is not representation. It is educating members, assisting with claims, advocating for legislative changes, responding to policy and law amendments and working with the WCB community.



Disclaimer

Where there is any inconsistency between the views expressed in this Power Point and the WC Law, Policy, Act, Legislation or Practice Directives, including the Review Division and WCAT MRPP, the latter will prevail.

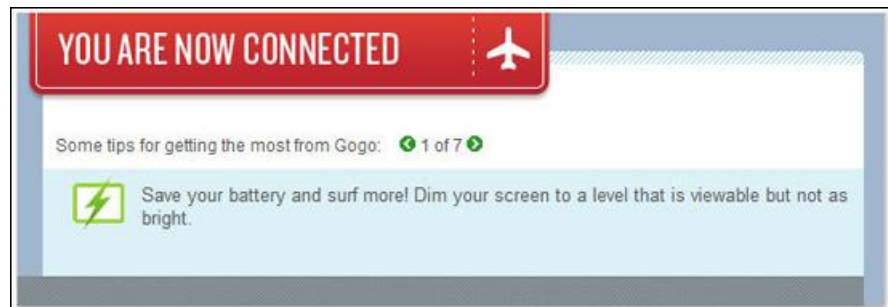
Group Activity

- Typical, common work related injuries
- Five (5) or so people per group



Interesting Trivia & Facts

- On average, if you are injured on the job and need time off – the amount of days off is the same as your age eg. 40 years old = 40 days off.



Airline Industry Facts and Figures

- Sources of injury – carry on items and storage, galley and service equipment, turbulence, etc.
- Illness and injury days of absence are 6X higher than private sector, non airline rates (North America, multiple sources, 2010)
- Number one type of injury – exertion – sprains / strains – arms - elbows and forearms, back (2009 statistics)
- Number two type of injury – falls – surface wounds – legs, thighs (2009 statistics)

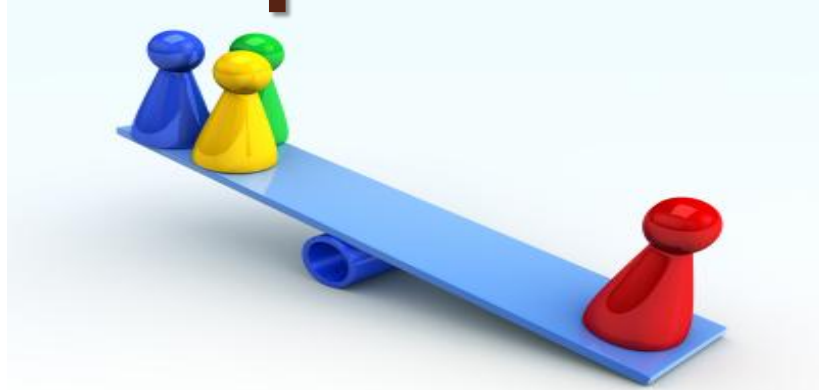
Most Prevalent Injury Mechanisms (Non-Turbulence)

- Overhead bins – struck by falling passenger items (number one mechanism)
- Opening and closing bins
- Moving luggage in bins
- Tripping over passenger items
- Handling passenger items (not in overhead bins)
- Assisting special needs passengers
- Broken equipment i.e. Service carts

Workers' Compensation: The Big Picture – Our Rights at Risk History and Overview



What is Workers' Compensation?



WCB is based upon the **“Historic Compromise”** of not being able to sue your employer in exchange for insurance for work related injuries – the workers’ compensation system. In reality, the system was to protect employers’ economic interests.



Before Workers' Compensation

- Workers had to sue their employers if they were injured on the job.
- Negligence was difficult to prove.
- Very expensive for both workers and employers.
- Workers could be fired.
- There was no guarantee that the lawsuit would be successful.
- Lawsuits took a long time to be heard.
- If a worker was partially at fault, they might not receive anything.

History of Canadian Workers' Compensation

- **Germany enacted the first Workers' Compensation**
- **The MEREDITH REPORT**
 - Chief Justice of Ontario appointed in 1910 to investigate and report on a system of workers' compensation
 - His report released in 1913 was based on:
 - **The Historic Compromise:** Workers gave up the right to sue the employer, in exchange for the right to no fault compensation for workplace injury
 - Led to enactment of Canada's first modern workers' compensation legislation in 1914, taking effect January 1st, 1915, in Ontario

History of Workers' Compensation in British Columbia

- **1915 – Bill 26 Draft Legislation**
 - Based on Ontario *Workmen's Compensation Act*
- **September 1915 – Pineo Committee established to study Bill 26**
 - Proceeded on the assumption that:
“Industry should bear the burden of its accidents, and the cost should be assessed on the employers to be ultimately distributed among the consumers of the products, the same as other costs of production.”

BC System Reviews 1991 to 2002

- **1994 – Coverage extended to all BC workers with a short list of exceptions**
- **1996-1999 – Royal Commission – 1997 New OH&S Regulations implemented, based on Royal Commission Recommendations**
- **2002 – Bills 49 and 63 (See the BC Federation of Labour document “Insult to Injury” at <http://www.bcfed.ca/node/1621>)**
 - **Bill 49** changes benefits to workers such as pension lump sums and wage rates (e.g. Wage-loss benefits have been cut from 75% of gross salary to 90% of net)
 - **Bill 63** changes create Review Division and Workers’ Compensation Appeal Tribunal whereas there were three (3) levels of appeal previously

A Summary of Significant Recent Changes in BC

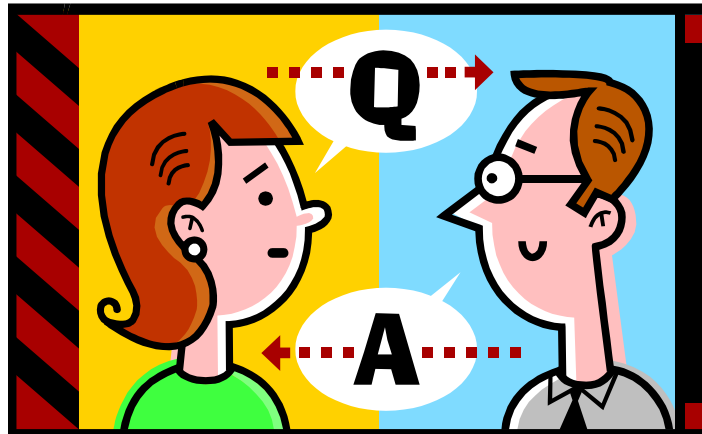
- **Bill 14 (2012) – now there are many requirements for mental disorder claims.**
- **Numerous annual WCB Policy reviews (14 per year) that slowly strip OH&S and Compensation rights away.**
- **Increasing reliance upon the courts for redress in expensive, lengthy judicial reviews.**

Threats to the Public System

- In Spring 2012, the Ontario Conservatives advocated for privatizing WSIB in Ontario.
- In the United States, only four (4) states still have public or partially public systems.
- Cost overruns are common in U.S. private systems.
- Legalization of the WC systems in Canada create barriers for workers.
- 14 annual anti-worker Policy Reviews by WorkSafeBC.

Question & Answer

- Why is a public system important?
- What are your experiences with WCB?





Worker's Compensation

Five Basic Principles of Workers' Compensation

1. No fault system – although this is changing.
2. Injured workers can't sue employers or other workers (usually).
3. Employer-funded collective liability.
4. Secure payment for injured workers.
5. Administered by independent agency.



Advantages for Workers

- Quick access to income replacement if injured at work.
- Stable, securely-funded income source.
- Coverage for health care costs associated with work-related injuries.
- Expense and delay of litigation avoided.
- Public and accountable administration.
- Assistance with prevention and return to work efforts.

Advantages for Employers

- Predictable and manageable costs.
- Shared liability with other employers.
- Public and accountable administration.
- Expense and delay of litigation avoided.



WORKING TO MAKE A DIFFERENCE
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Role of Workers' Compensation Board

- Collects assessments from employers
- Administers both sides of the system:
 - Benefits and services for injured workers.
 - Assessment and collection of payments by employers.
- Promotes accident prevention.
- Workers' Compensation Act covers claims, assessments, OH&S and appeals.
- Claims are 80% of WCB activities.



Concept of Fault Now in WCB Legislation and Federal Legislation

- The concept of fault exists in legislation and Policy.
- 14.3 – Hazards Arising from Nature.
- If the conduct is “serious and willful”.
- Can be used as grounds for denying a claim.
- Examples – not wearing appropriate clothing or uniform e.g. lifeguards, Canada Post, etc.
- In Missouri, benefits are reduced by 25% to 50% if the injured worker did not follow a workplace safety rule.

Who Does What at the BC WCB?



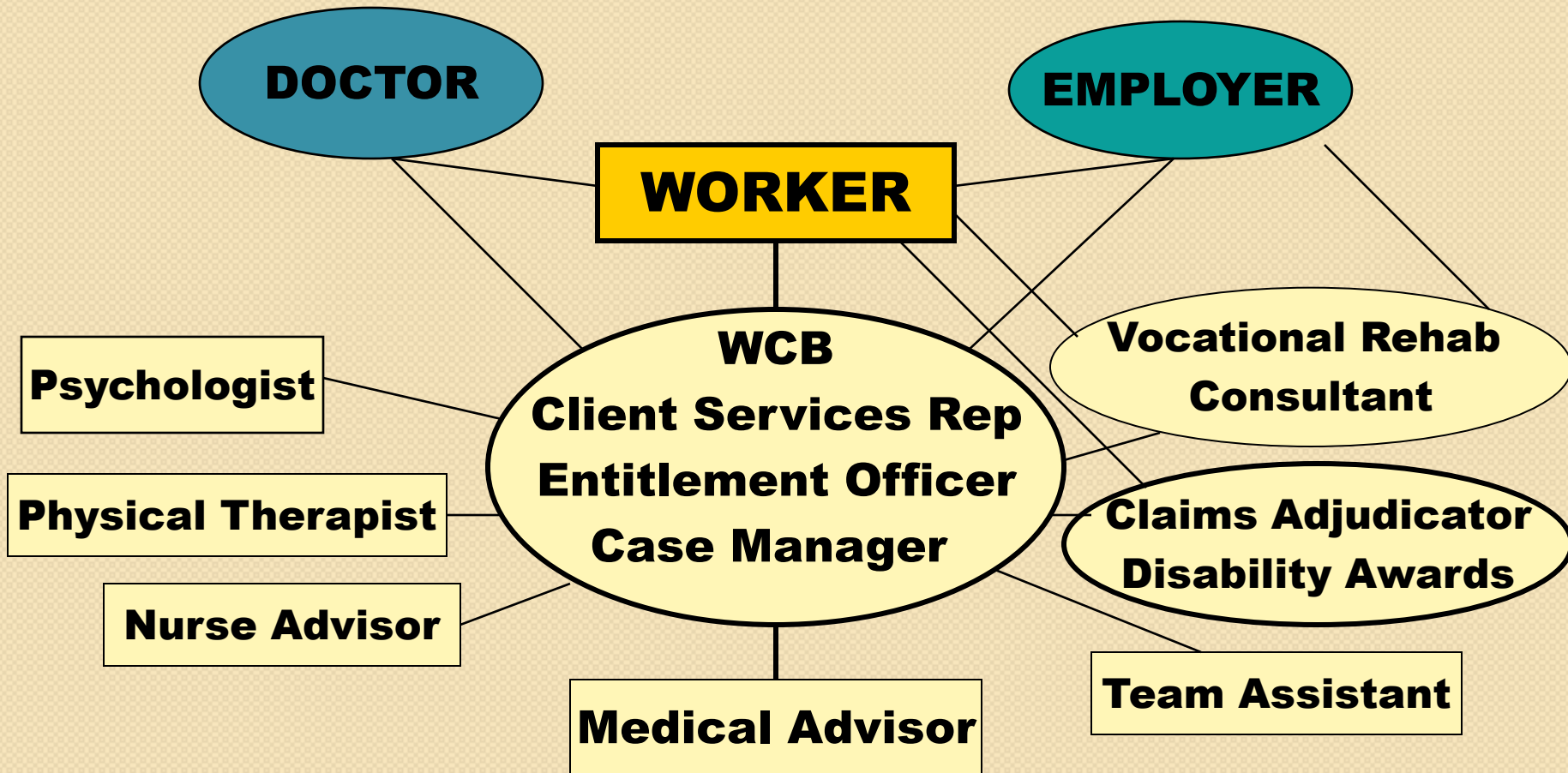
Who Does What?

- **Client Services Rep.** – Person who answers the phone & makes basic entitlement decisions.
- **Entitlement Officer** – Adjudicates initial & ongoing entitlement – 4 weeks to 3 months time loss.
- **Case Manager** – Decision maker & worker contact – complex claims or long term wage loss plan.

Who Does What? (continued)

- **Medical Advisor** – Medical opinion & claims advice.
- **Nurse Advisor** – RTW goals & plan – liaise; initiate medical referrals, etc.
- **Team Assistant (Now Service Coordinators)** – Case Manager Team.
- **Vocational Rehabilitation Consultant** – Plans rehabilitation.
- **Case Manager & Entitlement Officer** – Most common contact persons.

Dealing with WCB

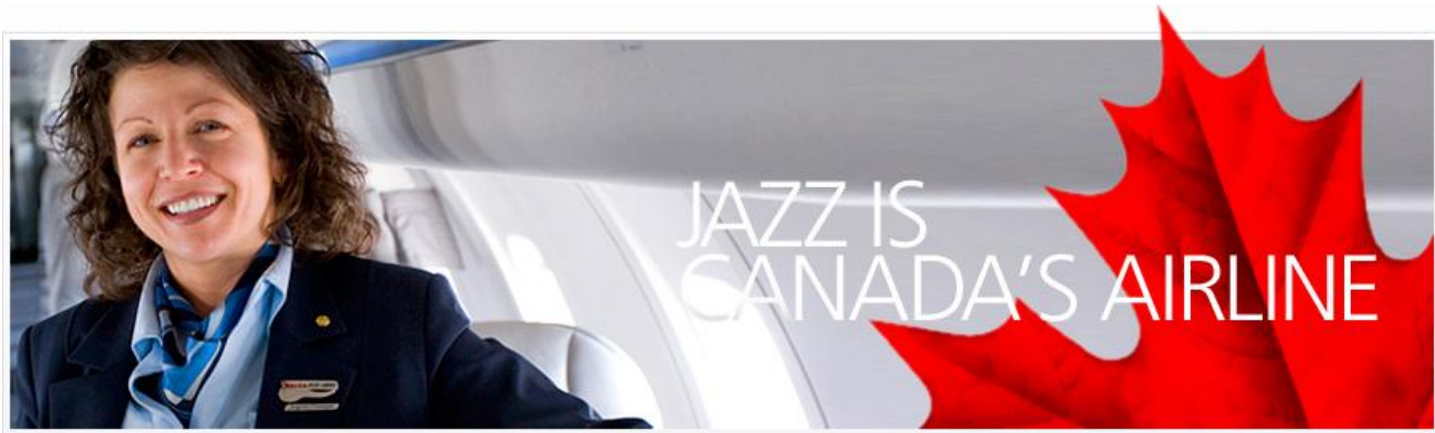


Definitions



Definition of “Worker”

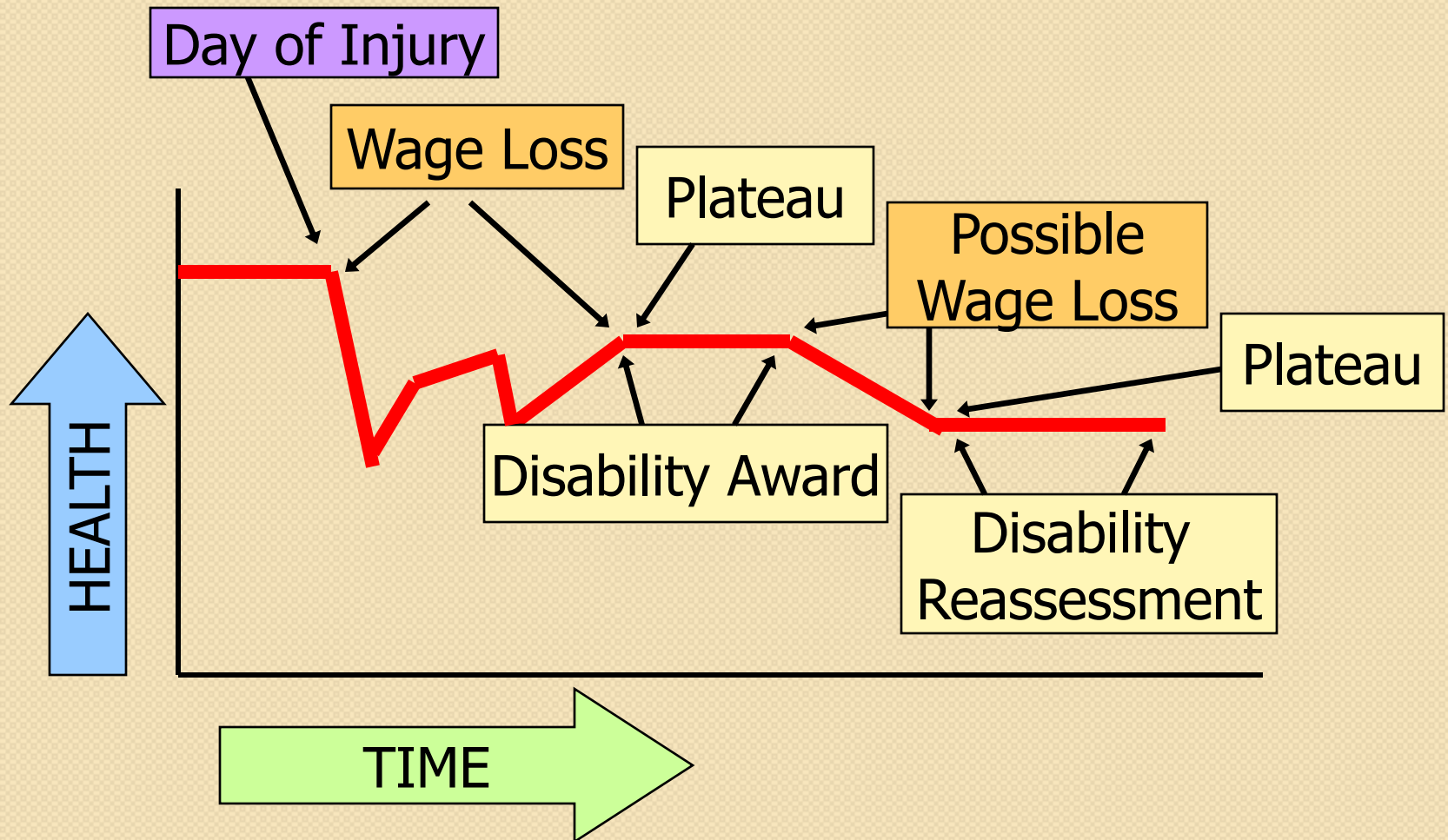
The Act has seven (7) definitions for workers. Virtually all workers are covered unless specifically excluded.



Employers Covered by the Act

- Since January 1, 1994, virtually all employers in British Columbia have been covered.
- Exclusions – Employer is presumed to be covered unless on an exclusion list.

Life of a Claim



Workers' Compensation: Entitlement



Entitlement

Issues:

- Coverage – who, what, where, when, how and under what circumstances
- Compensable Injury and Occupational Disease

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Entitlement (continued)

For Entitlement, Worker Must Sustain:

- A personal injury
 - A. In the course of employment (s.5), and
 - B. Arising out of employment
- Occupational disease
 - Must be due to the nature of employment (s.6)
 - Some are contained in Schedule B
- Occupational hearing loss (s.7)

Benefits Entitlement

What You Might Get

- Wage Loss Payments
 - Temporary Disability Benefits
 - Total or partial
- Health Care Benefits
- Vocational Rehabilitation Assistance
- Disability Benefits
 - Permanent Disability Benefits
 - Total or partial
- Survivor and Death Benefits

Wage Rates

- Wage Rate is the basis of most benefits.
- 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
 - s.33.1(1)
 - WCB benefits cannot be garnisheed

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 apprentice or learner, permanent employment for less than twelve (12) months, exceptional circumstances cases, exceptions for casual workers, POP, or no earnings

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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

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Health Care Benefits (continued)

- Must get approved in advance for each of these services





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?

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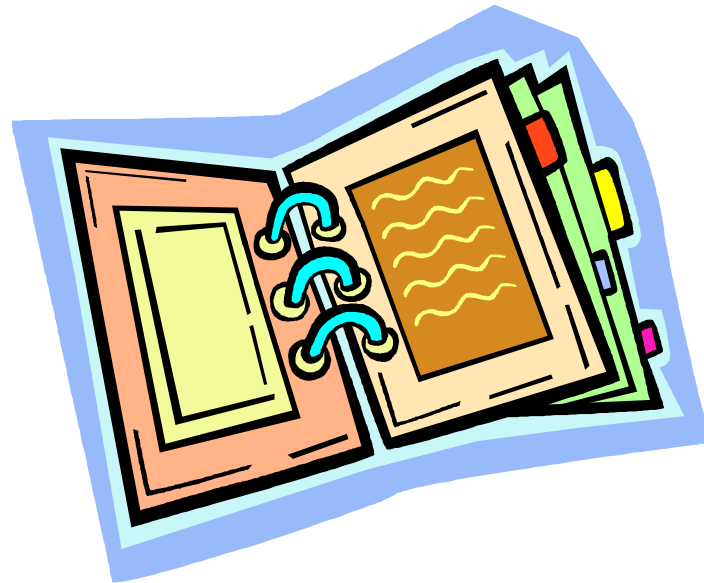
Criteria for Acceptance (continued)

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?



What Injuries Must Be Reported?

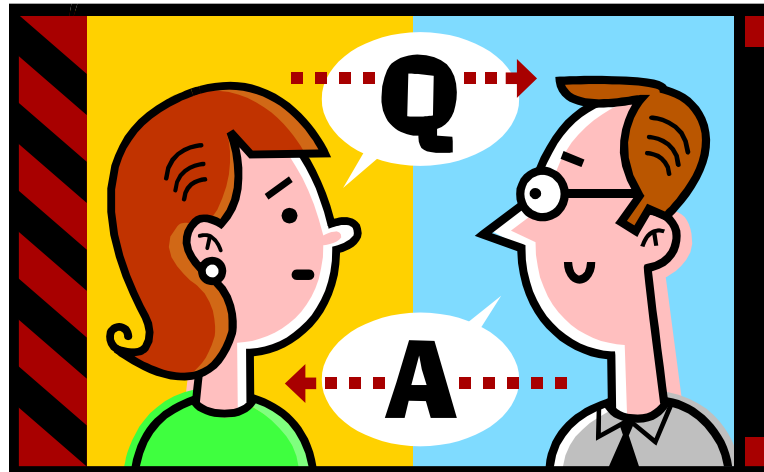
- Loss of consciousness following injury
- If worker is transported or directed to a place of medical treatment by the employer
- If the injury obviously requires medical treatment
- Worker states an intention to seek treatment

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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 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



Advice to Injured Workers

- Get immediate first aid.
- Document personal injury/occupational disease in first aid book.
- Report any personal injury/occupational disease as soon as practicable.
- Fill out the Form 6.
- Review the WCB Guides.

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Advice to 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.

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Advice to 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**
- **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

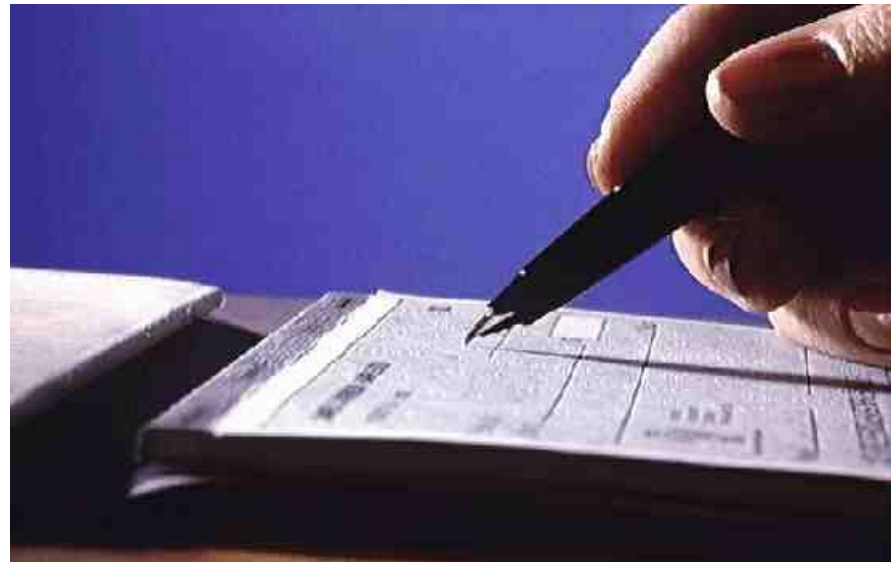
- Date and time of injury
- When injury was first reported to employer (Lines 1, 2 & 3)
- What happened to cause the injury? (Line 4)
- State all injuries reported (Line 6)
- Did you lose any time from work beyond the day of injury? (Line 7)

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

Group Activity

- Filling out a Form 6 with sample fact / injury patterns.
- Errors and problems?



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

- Worker's statement of what happened
- Presenting Complaint(s)
- Ability to Work
 - Date first disabled (Doctor's opinion)
 - When fit to return to work (Doctor's estimate)
 - Can worker do alternative light or part-time work?

Re-opening

- Claims are never closed.
- With proper evidence, you can re-open your claim for increased level of disability or another period of disability.

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Re-opening (continued)

WCB Can Only Re-open a Claim if:

- There is a significant change in the compensable medical condition,
- **OR** there is a recurrence of the injury (or disability),
- **AND** can only reopen from the date of the significant change or recurrence.

Reconsiderations

- A pre-appeal 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).

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Reasons for Denied Initial Claims

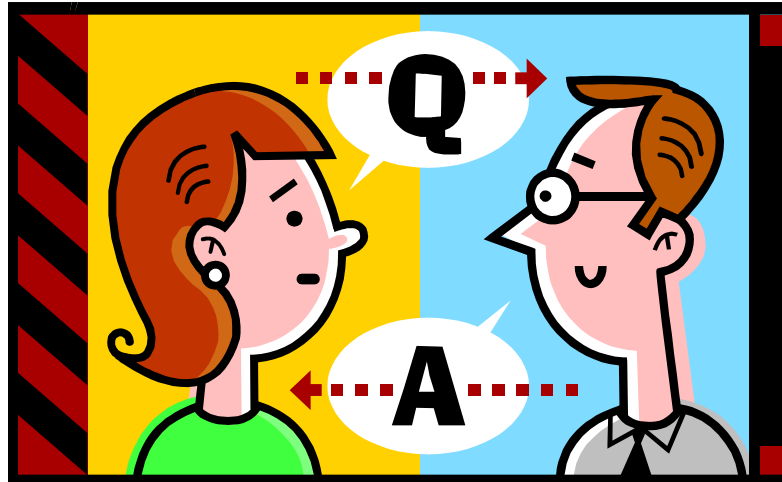
- Delayed reporting to employer or doctor
- Different descriptions of the accident on the various Forms
- Injury/exposure did not happen at work
- Injury/exposure was not caused by work

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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.

Question & Answer Period



Employer Requests for Information

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

Vocational Rehabilitation



5 Steps to the Rehabilitation Process

Phase 1 – return to same job with same employer

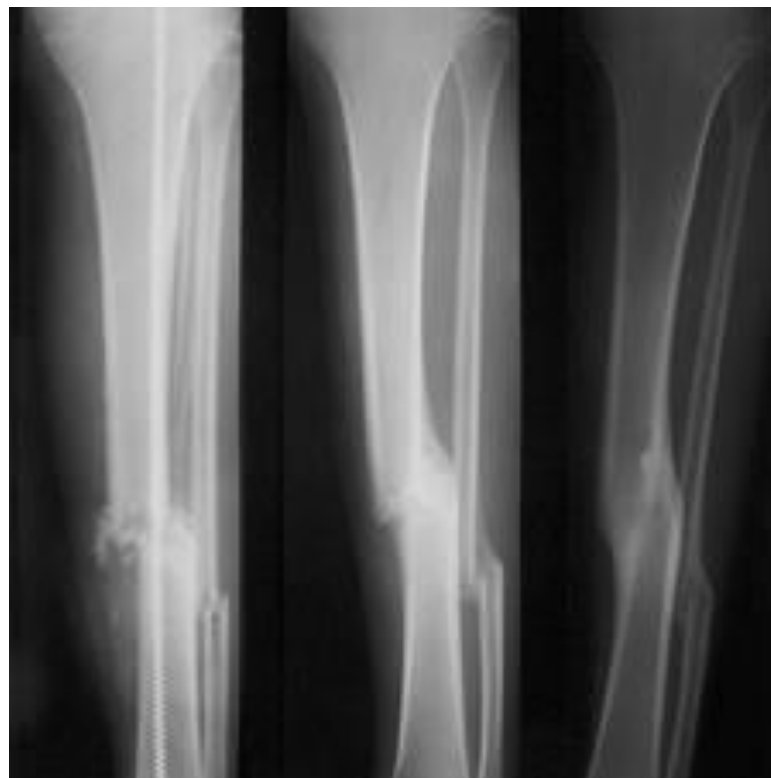
Phase 2 – modified or different job, same employer

Phase 3 – different job, new employer, same industry

Phase 4 – different job, new employer, all industries

Phase 5 – consider new occupational skill development

Disability Awards



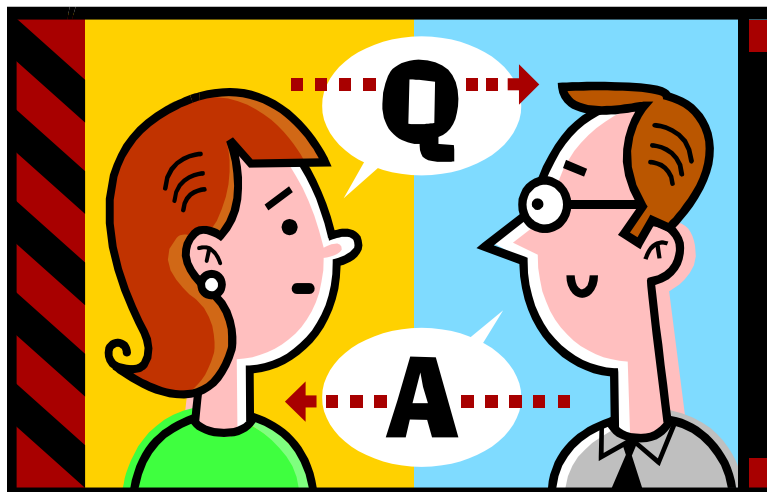
Disability Awards

- Loss of Function
 - Permanent Total (PTD s.22)
 - Permanent Partial (PPD s.23(1))
- Loss of Earnings
 - Partial OR Total (LOE s.23(3))

Permanent Disability Awards

- Loss of Function – for permanent functional impairment (PFI) – s.23(1)
 - % of loss of whole body function based on WCB or external provider PFI exam, ARCON input, and/or Permanent Disability Evaluation Schedule

Question & Answer Period



Pain, Chronic Pain, and Section (23) Awards



Chronic Pain and S.23(1) Award

- When chronic pain is specific and consistent with the impairment:
 - s.23(1) award will be considered appropriate compensation
- Where a s.23(1) award for chronic pain is granted, it will be 2.5%

Tests for Chronic Pain – Overlap with Multiple Injuries and Psychological Claims

- Remember that **Chronic Pain** and other types of pain can occur simultaneously.
- There can be multiple awards for Chronic Pain e.g. 2.5% multiplied for several functionally independent injuries.
- Chronic Pain is usually 2.5% though there are many exceptions.

Mental Disorders and Psychological Conditions



Mental Disorders

- This is a very complex and new area of law and Policy.
- Bill 14 changed everything.
- A Guide has been created for Locals.
- Always check with your Local, Union Representative or Business Agent, OH&S Representative, etc.



Age 65 and WCB Coverage

An IAIABC (UC Berkeley) study on the aging workforce and attendant injuries states:

“...the underlying trend in absolute job risk for men and women do not change across the 55-64 and 65-74 and 75+ age ranges. **This is reasonably strong evidence that whatever the reporting level for occupational injuries is for persons under 65, under reporting increases substantially after workers reach 65.** As a rough estimate, **a worker over the age of 64 is 40% to 60% less likely to report an occupational injury than a similar worker 55-64 in the same job working the same number of hours...**”

Age 65 and WCB Coverage

(continued)

- 1/4 of all claims filed by workers aged 55 to 64 were a result of falls.
- The WCB states that CPP benefits are provided at age 65 so that is why the WCB often prefers to not pay benefits/wage loss past age 65.
- Employee statements about intended retirement dates are not the best source of evidence; the WCB will want other independently verifiable evidence. See Policy 41.00 and 35.30.

Age 65 and WCB Coverage (continued)

- Other evidence includes statements from co-workers, employer's availability of work, practice of other employees working after 65
- Statements by supervisors, pension information, etc.
- 4 categories – Employee, Employer, Union and Pension Information.
- Statements of intent to work too far in advance of retirement (10 years) pose problems.



Gender & WCB Claims

Gender and injury

“We find that women face a substantially greater risk of occupational injury relative to men when working in the same job. **Between the ages of 25 and 64, women have injury rates 20% to 40% higher than men in the same job, working the same number of hours.**

This higher risk for women has been missed because women are less likely to be injured overall. Women, despite representing about half the workforce, represent only about 40% of occupational injuries and illnesses.

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Gender & WCB Claims

(continued)

However the overall lower injury rates for women can be attributed to concentration in less risky occupations. Once you control for occupational risk, women are much more likely to become injured than men.”

This directly affects our members. We can expect that more mature members (plus 64, and especially women) are going to be (a) more likely to have higher injury rates and (b) much less likely to report them (recognizing this is the American experience).

Basics of Appeals



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

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

- Have to 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

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.

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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

WCAT – What Decisions Can Be Appealed?

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



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.

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.
- Where a Union does decide to represent members in WCB appeals, Section 12 still does not apply.
- The BC Labour Relations Board has made numerous decisions on this matter.

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WCB Advocacy and Section 12 (continued)

Leave for Reconsideration of BCLRB 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, BCLRB No. B249/93* (WCB appeal); *David Askey, BCLRB No. B337/2000* (civil action against LTD insurer)...”

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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. So we have a greater spectrum of liability for errors we make that are outside of those things we are not required by statute to do.

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Do We Have To Do WCB Appeals? (continued)

Always tell members:

“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.”

Resources

HELP



Documents

- Claim File (through Disclosure)
- Freedom of Information & Protection of Privacy Act
- Rehabilitation Services & Claims Manual (RSCM Vol. 1 & 2)
- *Workers Compensation Act*
- Review Division (www.worksafebc.com)
- WCAT (www.WCAT.bc.ca)
- WCB (www.worksafebc.com)

Documents (continued)

- WCB publications e.g. WCB Benefits and Services
- Assessment Manual
- Workers' Advisers' Website
(www.labour.gov.bc.ca/wab)

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