

Canadian Union of Public Employees

How to File WorkSafeBC ("WCB") Claims – Protecting Your Rights in CUPE Locals

WCB Advocacy Department - BC Regional Office



March 2014

There has been an increasing trend towards the use of consultants to appeal accepted WCB claims, returning employees to work prematurely, re-opening accepted claims and protesting claims in general.

This Guide is designed to help answer some of the most frequently asked questions about what to do in the event of a WCB Claim, a WCB Appeal, a Return to Work Program, or employers attempting to protest or re-open WCB claims.

Nothing in this Guide should be construed as legal advice or advocacy. The information provided is for general education purposes only and is subject to ongoing change and revision.

Tom McKenna, CUPE National Representative

Introduction:

Generally, for all sectors and sub-sectors, women were five (5) times more likely to be the recipients of acts of violence than men. Overexertion accounted for 28% (men) of claims while overexertion in women accounted for 33% of claims. Back strains accounted for over 24% of all claims. Other types of strains accounted for 37% of claims in women and 30% of claims in men.

What does this mean? The leading cause of injury generally is **overexertion**. **The most commonly claimed injuries are strains / sprains followed by back strains / sprains.**

Given the budgetary demands, increasing workload, etceteras, Local Unions must demand that the employer conduct **Risk Assessments** as required by the WCB Occupational Health & Safety Regulations. Second, Local Unions should focus on ensuring their **OH&S Committees** are active, educated, and have an equal voice in the workplace. Third, Local Unions should be aware of the role of employers' consultants and disability management specialists.

For further information on the 2010 and 2011 Annual Report, please see:

http://www.worksafebc.com/publications/reports/annual_reports/default.asp

http://www.worksafebc.com/publications/reports/statistics_reports/assets/flipbook/2010/index.html#/106/zoomed

Your Local Union and the CUPE BC Regional Office are committed to education and safety. There are a number of educational programs available for topics ranging from **Violence in the Workplace** to **Repetitive Strain Injuries**. Contact your Local Union for more information.

In the interim, this Guide will assist you if you are:

- injured,
- have a WCB claim, or
- have a WCB appeal, or
- have been contacted by an employer consultant.



KEY POINTS - WHAT SHOULD I DO IF I HAVE BEEN INJURED AT WORK?

- ✓ **Advise** your employer immediately – verbally and in writing, that an injury, occupational disease or condition occurred, even if it occurred over a period of time.
- ✓ **Fill** out the accident report / accident log the same day. Include witness reports, even if it was an injury that occurred over time.
- ✓ **Seek** medical attention the same day.
- ✓ **Give** a copy of your job description, accident report and WCB Form (Form 6) to your physician.
- ✓ **Know** your rights – visit the WCB website and be aware of the “TeleClaim” process for new WCB claims.
- ✓ **Have** all your forms, reports, chronology of accident details, etc with you during discussions with WCB.
- ✓ **Review** and correct any TeleClaim comments made in your WCB claim file.
- ✓ **Keep** an updated diary of the accident / incident and of the WCB claim, even after you return to work or your injury resolves.
- ✓ **Make** sure the Employer’s Report of Injury (Form 7) is filled out correctly, that you get a copy & that the OH&S Committee is involved at all stages of the claim process, including the Return to Work process.

What are the specific steps that I need to follow?

Step 1

Obtain First Aid immediately.

Even, where an injury or exposure occurred gradually or over a long period of time, report the exposure to your physician once you become aware of it.

Step 2

Even if First Aid or immediate medical attention is not required, **report the injury, condition, illness, or any exposure to the employer immediately** (even if no symptoms are present).

- You should report all injuries, exposures, accidents or incidents to your employer immediately.
- Please give a detailed explanation to your supervisors and Local Union Representative (e.g. Shop Steward or OH&S Committee member), as soon as possible. All information must be consistent. Keep a diary of all details, calls, meetings, events, etc.



Step 3

Report the Injury to the WCB, in writing and via TeleClaim, and your Physician within 24 hours.

How Do I File A WCB Claim?

- Ask the employer for a **Form 6** or go to the WCB website. Your Local may also have copies of the Form 6. You may also telephone TeleClaim. The employer must file the Employer's Report of Injury/Disease (**Form 7**). Ask for a copy once they have filled it out. Review it for errors or omissions.
- See your physician within 24 hours, even if it is a Clinic and not your regular physician. Your physician should file a **Form 8 / 11**. Ensure you provide a copy of the Form 6, Incident Report, your Job Description and any other materials describing what happened to your physician for review PRIOR to the physician filling of and filing of the Form 8 / 11.

- Your Local Union Representative should be made aware of the filing of the Form 6 in order to verify that the information is correct, provide assistance, note errors, advise the OH&S Committee of problems or concerns, and note trends.
- Note: the WCB often requires advance notice and authorization before certain services are paid for e.g. physiotherapy, massage therapy, chiropractic treatment.

The **link to the WCB Form 6** is as follows:

http://www.worksafebc.com/claims/report_injury/default.asp

The link to TeleClaim is as follows:

http://www.worksafebc.com/contact_us/teleclaim/default.asp

Or call:

1 888 WORKERS (1 - 888 - 967-5377), or #5377 for Telus, Rogers, and Bell mobility customers.



Can the Local assist me with the completion of the WCB Forms?

If you need assistance, contact your Local WCB Representative, if applicable, or contact the CUPE BC Regional Office via your Local. You may also call the BC Workers' Advisers Office, as per the contact information located later in this Guide.

The most important WCB document is the Form 6. Accuracy and consistency on this form are critical.

Include details of the following:

- + When the injury or exposure occurred.
- + How often it occurred.
- + The duration of symptoms.
- + The duration of the event, accident or incident.
- + The symptoms that were initially experienced.
- + The duration of the symptoms.
- + What substances were you using?
- + What equipment was used?
- + Was anything broken, missing or out of the ordinary?
- + Staff shortages?
- + Anything unusual, unaccustomed, or out of the ordinary?

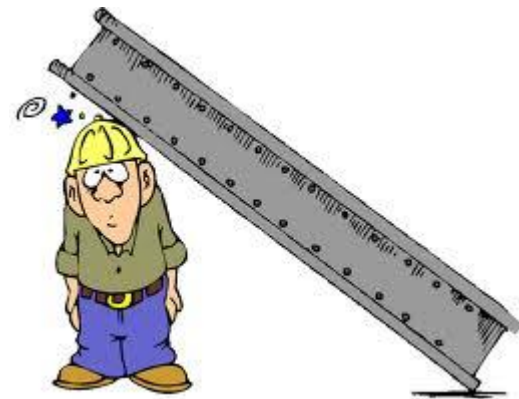
- + Changes to your job?
- + Changes to staffing levels?
- + Presence of any similar claims / injuries other people experienced or filed.
- + OH&S issues that directly relate to the claim, but NOT labour relations issues.
- + All symptoms, conditions, and injuries – not just the most noticeable ones.
- + Frequency of medical treatments.
- + Use of medications or other treatments.
- + Anything else you can remember about the accident, accident or exposure.
- + Were there witnesses to the accident?

Remember – always keep a copy of the Form 6 for your physician to review and for the TeleClaim call.

If the WCB sends any additional forms or questionnaires, ask for assistance from your Local immediately. This especially applies to the *Activity Related Soft Tissue Disorder / Injury Questionnaires* from the WCB for Repetitive Strain Injuries. Assistance must always be requested for these types of documents due to their complexity.

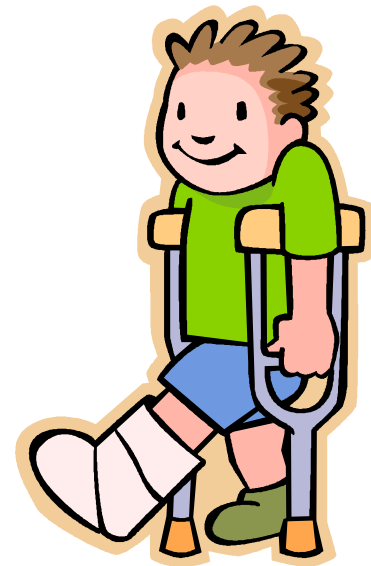
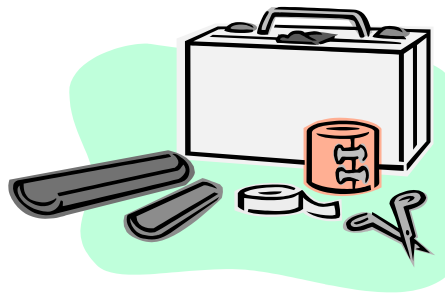
HERE ARE SOME OTHER POINTS TO REMEMBER:

- It is your right to file a WCB claim. No one can tell you not to file a WCB claim, including the employer.
- Advise the employer of any injury or the possible onset of a work related disease/condition. If you feel you are able to continue working, then you should keep detailed records of the incident, document the names of any witnesses and any conversations. Note if you were working in pain, performing limited duties, had people helping you, or left work early.
- Even if you are told by your supervisor that you will be provided light duty work, a WCB claim should still be filed and the relevant Incident/Accident Reports filed. WCB claims are often denied because of either late reporting to the employer or the WCB, or, not seeing a physician the same day.
- The WCB requires that the injury or condition arise “out of and in the course of employment.”
- The work activity need not be the only factor.
- A pre-existing condition might be aggravated, accelerated or activated by the work duties and still be acceptable.
- There is no requirement in law or Policy that work be the only causative factor or the most significant causative factor.



Here are just a few examples of what the WCB might allow if the WCB claim is accepted, in addition to wage loss and treatment:

- ❖ Specialized medical testing such as with the Visiting Specialist's Clinic, Functional Capacity Evaluations, Employment Assessments and diagnostic testing such as MRIs.
- ❖ Wheelchairs, canes, special shoes, hearing aids, dentures, artificial limbs, et ceteras.
- ❖ Most prescription drugs.
- ❖ Modification of the workplace.
- ❖ Return to work programs.
- ❖ Vocational rehabilitation.
- ❖ Travel costs for treatment.



What does the WCB look for when investigating a claim? What are key aspects in claim adjudication?

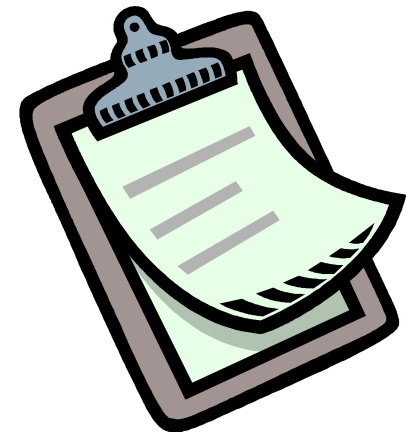
The WCB will assess your claim or appeal on the answers to such questions and fact patterns as:

- Same day reporting to the WCB, the employer, the physician and same day filing of the First Aid / Accident Reports.
- Consistency of information reported to and by the physician, the worker, the employer and the accident / incident reports. The WCB will check for consistency of all information during telephone calls such as during TeleClaim.
- Words such as “maybe,” “probably,” “might have,” “could have,” et ceteras should not be used by physicians or the claimant on any form, letter or report.
- Continuity of medical treatment (first aid, medication, self-directed treatment).
- Continuity of complaints or symptoms, which determines the duration of WCB compensation in many cases.
- Evidence of non-work causation should be avoided. Was it truly work related and to what degree?
- Was there evidence of something unusual, out of the ordinary or unaccustomed?
- Employers who protest or object to the claim.
- Witnesses / Witness Statements.
- Late onset of symptoms.



What to tell the health care professional:

- Your physician cannot act as an advocate.
- Please give the Workers Compensation Appeal Tribunal (“WCAT”) Medical Evidence Guide to your physician for review after obtaining it from your Local, the CUPE BC Regional Office or the WCAT website.
- Your physician can rely upon subjective complaints but should normally base their opinions on objective medical evidence and Chart Notes/Clinical Notes.
- Your physician should read your job description, copy of the Accident / Incident Report, Form 6, and injury details to ensure they are consistent in reporting to the WCB in the Form 8 / 11 (Physician’s Report).
- Report all symptoms, in all parts of the body, and the duration and ensure these are reflected in the Form 6 (worker report) and Form 7 (employer report) as well.
- Provide copies of all relevant documents, on an ongoing basis, to your physicians.



What is next? Next steps:

A. Do I need to get witnesses?

Ask witnesses via the Local Union to the accident/incident to write down what they saw. They should include the time and date on their statement, and they should also sign it. In many situations, the onus is on the injured worker to prove that the injury “arose out of and in the course of the employment.”

It is important to advise the employer, the attending physician and other practitioners, as well as witnesses about your symptoms, pain, etc, but not your diagnoses – privacy is important. Continuity of complaints may help you substantiate your claim later.

B. What can I do while I’m off work waiting for my claim to be approved? What if no sick leave is available?

- apply for EI sick benefits
- apply for LTD
- check your collective agreement for other benefits



- apply for CPP benefits
- cooperate with the employer in Duty to Accommodate investigations and processes
- visit your health care professional on a regular basis

C. Do I need to report anything else to the WCB after the Form 6 and TeleClaim are completed?

Report any changes in income, secondary employment, overtime, per diems, return to work status, changes in medical conditions or changes in your contact information, et ceteras to the WCB immediately.

D. What if I don’t co-operate or my employer does not co-operate?

The WCB Regulations set out a duty to cooperate for both the worker and the employer. Otherwise a claim may be terminated or rejected if this does not occur.

E. What else can I do?

- ✓ It is important to keep a diary of all communications, correspondence, appointments, and actions regarding the claim. This would include any telephone conversation with the employer, WCB or the Union.
- ✓ When speaking to the WCB Representatives, remain calm. Getting angry and threatening the WCB adjudicators often results in a notation to the WCB claim file. It will not assist the claim. It is important to remember that the WCB documents all telephone calls you have with them on a continuous basis for the duration of the claim.
- ✓ Keep a copy of all correspondence regarding the injury, including prescriptions, health care professionals' notes, forms and letters. A copy should also be given to your Local Union Representative. If you have verbal contact with the WCB, make detailed notes of what both parties said.
- ✓ Cooperate in health care treatment.
- ✓ Cooperate in safe return to work.
- ✓ Complete and return all WCB forms promptly.
- ✓ Copy the Local Union on all documents.
- ✓ Copy your physician or other practitioner e.g. chiropractor, on all correspondence from the WCB.
- ✓ Appeal any WCB decisions within the time required. If your claim is denied, appeal it immediately.



F. What if the employer is objecting to (“protesting”) my claim, or, has a consultant fighting my claim?

Employers may or may not have Human Resources personnel who assist in the filing of claims, reviewing claims, and, in certain cases, protesting claims. Employers are legally allowed to protest a WCB claim, or, in certain limited cases, ask the WCB for a review or a re-opening of the claim. An employer may contract these and other services to a consultant. These firms include: *TeksMed Quikcare* (“TeksMed”), *Pacific Risk Management Corp.*, or *Disability Management Institute*, among others.

The mandate of these consultants varies. Some assist workers. Some assist employers in opposing WCB claims, while others assist employers with Return to Work Programs, Job Demands Analysis, Functional Capacity Evaluations, obtaining diagnostics such as MRIs, reducing administration costs, claims costs recovery, claims management, scrutinizing claims that go beyond ten (10) weeks duration, training, or even Occupational Health and Safety program review.

Currently, the primary emphasis of many consultants is to return injured workers to work as soon as possible. There is also a strong WCB emphasis on Return to Work programs and WCB Vocational Rehabilitation.

If your employer is protesting your claim, participating in a WCB appeal, has asked for Cost Relief from the WCB, has asked for a claim to be re-opened, or is utilizing a consultant, contact your Local immediately. If you have a claim, do not sign any Releases or Forms from the employer or a consultant until you have contacted your Local Union. Any Releases, Forms or documents given to you by the employer or a consultant should be forwarded to the Local Union for review immediately. Some employers or consultants attempt to get permission to speak with your physicians; this should not be given.

Occasionally, consultants, as well as the WCB, conduct (or contract to be conducted) video surveillance in order to gather evidence that confirms the presence or lack of disability. These videos and attendant reports often become the basis for protesting claims and appeals.



For more information on what rules the investigators must follow, please contact the CUPE BC Regional Office via your Local Union, or, go to the WCB Field Investigations Department at:

http://www.worksafebc.com/contact_us/fraud/fi_eld_investigations_department/default.asp

Or,

WORKSAFEBC PRACTICE DIRECTIVE # C12-7

TOPIC: Surveillance and Other Evidence

ISSUE DATE: May 2, 2007, Amended March 16, 2011

The contact information for these organizations in British Columbia is as follows:

- Disability Management Institute:

<http://www.disabilityinstitute.com/>

Western Office
#203 - 2071 Kingsway Avenue
Port Coquitlam, BC V3C 6N2

Toll Free: 1-866-963-9995

- Pacific Risk Management Corp.:

<http://www.pacificrisk.ca/>

Pacific Risk Management Corp.
135 - 10451 Shellbridge Way
Richmond, BC V6X 2W8

Phone: (604) 279-2321

Fax: (604) 279-9558

Email: ljohnson@pacificrisk.ca

- TeksMed (Teksmed Services Inc, *Quickcare*):

<http://www.teksmed.com/>

West Office
TeksMed Centre
Suite 7 - 8635 Young Road
Chilliwack, BC V2P 4P3

Toll Free Voice: 1-877-850-1021

Toll Free Fax: 1-877-504-1777

For further information, please see *WorkSafeBC / WCB Compensation Issues and Trends for 2012* via the CUPE BC Regional office.



G. What if the WCB claim or appeal is denied?

There are strict time limits for appeals, so immediate action is required.

Here is a list of actions that need to occur and information you need to have:

1. Local Union members have the option of obtaining free, expert assistance from the BC Workers' Advisers Office. You do not have to ask CUPE for assistance. The BC Workers' Advisers Office email and contact information is:

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

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

2. You may also hire your own lawyer at your own cost. Fees range widely. CUPE does not have WCB lawyers.

3. If you chose to use CUPE for assistance, the CUPE BC Regional Office National Representative WCB Advocacy role is to assist members, as opposed to direct advocacy or being the Representative. This means that you would receive email, telephone and written assistance on your file, claim, any appeals, medical evidence, return to work, et ceteras. This may include drafting or reviewing written submissions for the **two (2) stages of the appeal process (the review at the Review Division and the appeal at the WCAT)**. Court actions, WCAT Requests for Reconsideration and Human Rights Complaints are not performed due to the complexity, legal nature and cost of these types of proceedings.
4. Any assistance, advocacy or representation (each are a different term), can only occur after the standard Releases are signed and returned to the Local Union, as well as copies to the CUPE BC Regional Office National Representative WCB Advocacy. Copies of all Forms and Releases are available from the CUPE BC Regional Office, via your Local Union.

5. Members should obtain documents which will assist with the process. These include:

- a. *"Filling Out WCB Forms"* – used at the WCB Claim Filing Stage
- b. *"How to File a WorkSafeBC Claim and Return to Work Safely"* – used at the WCB Claim Filing Stage, Appeal Stage, Return to Work Stage
- c. *"WCAT Medical Evidence Guide for the Physician"* – used at the WCB Claim Filing Stage, Appeal Stage
- d. *"Permanent Functional Impairment Pension / Disability Award Decision Review Checklist"* – used at the WCB Pensions Stage, Long Term Claims, Appeal Stage

6. Please make sure you are aware of any time lines, due dates, appeal due dates, et ceteras.

7. Please mark any of these dates into your calendar and into a diary or log.

8. Please file the appeal paperwork as soon as possible. Have the Local Union review the documents.

9. Please ask the WCB for Disclosure of your WCB file. Here is the Form and web site.

Note: Forms change frequently so check to ensure this is the most current version.

http://www.labour.gov.bc.ca/wab/pubs/forms_appeal.htm

or Form 25M13

<http://www.worksafebc.com/forms/>

10. Please copy the Disclosure and any other documents. Send a copy of these to the Local's attention.

11. NEVER assume the Local or the person assisting you has a document you are referring to. The WCB or the appeal tribunals often do not copy other persons on correspondence.

12. Please provide a copy of the WCB decision you are appealing or have concerns about to your physicians for review as you will likely need to ask them if they are willing to support you as NON-ADVOCATES in the appeal process, and, if so, you will need comprehensive written opinions from them at some point.

13. Please provide a copy of your Job Description and Job Duties to your physicians.

14. Please provide a copy of the WCB decision and any other correspondence from the WCB attached to that decision to the Local's attention as soon as possible.

15. Please review the WCB claim file "portal" frequently using your Personal Access Number and ID / PIN in order to ensure you are aware of any developments or decisions on your claim.

16. Please note – NOT ALL WCB DECISIONS WILL BE IN WRITING – SOME ARE ORAL AND MAY NEED TO BE APPEALED.

17. Please advise your Local Occupational Health and Safety Committee as to what has transpired, on an ongoing basis.

18. Keep a detailed record of all actions, calls, receipts, treatment, et ceteras.



H. What about a Return to Work (“RTW”) Program?

There are many different types of return to work programs. Some are through the WCB, others are through the employer or are part of the Duty to Accommodate process. Insurance companies may also have an RTW, where a person returning from Long Term Disability may need assistance. Each is unique. This Guide will only address the WCB RTW and Vocational Rehabilitation process.

As per the WCB:

Return to Work Support Services are designed for the injured worker who does not require a structured treatment program but would benefit from a supported return to work. Return to Work Support Services may be performed by a physiotherapist, an occupational therapist, or a kinesiologist experienced in the performance of return to work services and job-site visits. The goal of RTW SS is to return injured workers to their pre-injury duties at the work place.

Return to Work Support Services provide the following components, each available as a stand alone service or in any combination:

- Job site visit (JSV)
- Graduated Return to Work (GRTW) Planning
- Graduated Return to Work (GRTW) Monitoring
- Job Demands Analysis (JDA)

[Description of services](#)

[Admission criteria](#)

[Length of service](#)

[Service locations](#)

[Referral process](#)

Description of services

Job Site Visit - The JSV may include any of the following:

- Brief review of work tasks;
- Confirmation of the worker's critical job demands;
- Exploration of simple job modifications and return to work options;
- Consultation with relevant stakeholders to establish an appropriate return to work plan; or
- Ongoing support of the graduated return to work plan, including job coaching.

Graduated Return to Work Planning - The GRTW Plan is developed with the participation of the injured worker, the employer, the attending physician, the WorkSafeBC officer and other relevant stakeholders. It will contain specific hours, duties and a defined end date.

Graduated Return to Work Monitoring – This service ensures that a Graduated Return to Work Plan is fully implemented with appropriate support provided as needed. Graduated Return to Work Monitoring provides a minimum of weekly communication with all of the relevant stakeholders and revision of the Graduated Return to Work Plan if warranted.

Job Demand Analysis - This is a detailed quantitative and qualitative assessment of the physical demands, environmental and psychosocial stressors associated with a particular job. The JDA will provide quantification of workplace demands including frequency of activities, weights, heights and distances.

Admission criteria

The program is designed for workers who do not require a structured treatment program but require supported return to work. It is possible that the worker could be receiving physiotherapy or hand therapy in conjunction with Return to Work Services.

The program is not appropriate for workers participating in a WorkSafeBC-sponsored rehabilitation program (excluding the Hand Therapy Program).

Length of service

GRTW plans are generally four (4) to six (6) weeks in duration.

Service locations

Return to Work Support Services are provided by [WorkSafeBC-approved providers](#) throughout B.C.

Referral process

“Workers are referred for Return to Work Support Services by a WorkSafeBC officer, usually following recommendations received from various health care providers.”

See:

http://www.worksafebc.com/health_care_providers/programs_and_services/return_to_work_support_services/default.asp

Lastly,

“A successful return-to-work program requires options available at the workplace that enable an injured worker to safely return to work in a timely manner.

Return-to-work programs:

- May involve transitional duties or a gradual return-to-work progression
- Are guided by timelines established with a physician, taking the worker's capabilities and medical restrictions into account
- Have an established start and end

Return-to-work tasks:

- Are temporary
- Are meaningful and productive
- Are designed to help return an injured worker to regular full-time duties in a safe and productive manner
- Allow the injured worker to return to the job site for partial days, gradually working up to full-time hours
- Offer graduated hours of transitional or regular duties
- Can combine offsite treatment with transitional or regular duties

WorkSafeBC nurse advisors are available to monitor the progress of the worker and make recommendations to the case manager or entitlement officer regarding the transition to full-time hours, ensuring an effective transition.”

See:

http://www.worksafebc.com/claims/rehab_and_rtw/rtw_workers/what_is_a_return-to-work_program/default.asp

If you have a WCB claim that was accepted for Vocational Rehabilitation benefits, see the following WCB site excerpt:

“Vocational rehabilitation helps disabled workers get back to work after a compensable injury or the onset of an occupational disease.

Services include:

- Vocational assessment and planning
- Counselling
- Work assessment
- Work site job modification
- Job readiness and placement assistance
- Skill development
- Employability assessments

In some cases, WorkSafeBC may offer assistance to the surviving dependent spouse of a worker who has died as a result of a compensable injury or occupational disease.

The goal of vocational rehabilitation is to help clients return to work in a timely and safe manner. Quality rehabilitation involves individual vocational assessment, planning, and support that makes the best use of rehabilitation resources and maximizes worker-employer outcomes.”

See:

http://www.worksafebc.com/claims/rehab_and_rtw/vocational_rehabilitation_services/default.asp

This is only a small sample of what services are provided. However, whether it is the WCB or the employer, your limitations, restrictions, pain and other considerations must be taken into account. The RTW process is detailed; it may take months or more. Contact the CUPE BC Regional Office National Representative WCB Advocacy, via your Local Union, for further information.

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CUPE BC REGIONAL OFFICE:

(604) 291-1940

<http://www.worksafebc.com/>

1-888-WORKERS

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

604-713-0360 or 1-800-663-4261

