 Yukon Workers' Compensation Health and Safety Board	Part:	Earnings Loss		
	Board Approval:	Original signed by Chair	Effective Date:	January 1, 2012
	Number:	EL-04	Last Revised:	
	Board Order:		Review Date:	

RECOVERY OF OVERPAID COMPENSATION

GENERAL INFORMATION

An overpayment of compensation occurs when a worker or worker's dependent is paid compensation to which they are not entitled.

Section 123 of the *Workers' Compensation Act, S.Y. 2008, c.12* (the *Act*) states the Yukon Workers' Health and Safety Board (YWCHSB) may recover overpayments of compensation.

PURPOSE

The purpose of this policy is to communicate the principles that guide YWCHSB in identifying and recovering overpayments made to workers and their dependents. The principles attempt to balance YWCHSB's fiscal responsibilities with the interests of workers, workers' dependents and employers.

DEFINITIONS

1. **Deliberate misrepresentation:** Any action, inaction, omission or misinformation which, in YWCHSB's opinion, constitutes a willful attempt by a worker or a worker's dependent to obtain compensation benefits to which they are not entitled. This includes:
 - (a) knowingly providing false or misleading information;
 - (b) failing, without reasonable cause, to report a return to work or to report a material change in circumstances that may affect entitlement to compensation or other benefits; or
 - (c) providing or withholding any other information with the intent to deceive.

- 2. Overpayment:** Any payment of compensation paid by YWCHSB to a worker or to a worker's dependent that is more than the worker or dependent is entitled to under the *Act*, regulations or YWCHSB policy. This includes interest that may have been paid. (See YWCHSB policy EL-03, "Payment of Interest on Compensation Benefits.")

POLICY STATEMENT

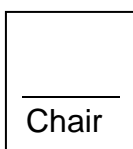
1. Identification of Overpayment

A worker or worker's dependent may receive an overpayment because of events or actions such as, but not limited to:

- (a) entitlement change;
- (b) receipt of Canada Pension Plan Disability benefits;
- (c) receipt of other employment-related earnings;
- (d) duplicate payments;
- (e) misinformation;
- (f) incomplete or incorrect wage information;
- (g) actual, verified earnings exceeding estimated earnings;
- (h) worker or dependent failing to provide relevant, accurate, complete or timely information;
- (i) miscalculation, including administrative error;
- (j) incorrect payment of survivors' benefits; or
- (k) fraud or deliberate misrepresentation.

When an overpayment is detected, YWCHSB will notify the worker or worker's dependent of the amount and the cause of the overpayment.

If the worker or worker's dependent notices an overpayment, they must notify YWCHSB as soon as possible.



Appeals

The overturning of a YWCHSB decision, through an appeal, does not create an overpayment. If YWCHSB decides a worker is entitled to compensation, the payment, to the date of the appeal decision, is lawful and does not become an overpayment even if an appeal body arrives at a different decision. The exception is when the YWCHSB decision is based on incorrect or inaccurate information provided by the worker.

2. Decision to Recover

YWCHSB reviews each overpayment to determine whether to proceed with or waive recovery. YWCHSB considers all relevant factors, including, but not limited to the following:

- (a) the amount of the overpayment;
- (b) the cause;
- (c) the presence of fraud or deliberate misrepresentation;
- (d) the impact of the recovery on the worker or worker's dependent;
- (e) the status of the claim; and
- (f) the time that has elapsed since the overpayment.

If YWCHSB determines the overpayment is the result of fraud or deliberate misrepresentation, the overpayment will be recovered regardless of any other provisions. In these cases, the recovery will not affect YWCHSB's decision to proceed with criminal charges.

Overpayments resulting from the following circumstances are not normally subject to recovery:

- (a) The amount of the overpayment does not exceed fifty dollars.
- (b) YWCHSB determines that recovery would result in severe, long-term financial hardship to the worker or worker's dependent. Financial hardship is not considered in cases of fraud or deliberate misrepresentation.
- (c) A decision is reversed as a result of new information that was not available at the time of the original decision, providing the decision was not induced by any misrepresentation or non-disclosure by the worker or worker's dependent. Or,

(d) the overpayment is the result of an administrative error of which the worker could not reasonably be expected to be aware.

3. Method of Recovery

YWCHSB may recover compensation overpayments by set-off, debt repayment or civil legal action. It will determine the method and repayment schedule on a case by case basis, in consultation with the worker or worker's dependent. YWCHSB will consider the financial circumstances of the worker or dependent.

a) Set-off

Set-off is when YWCHSB sets aside a portion of compensation payable to a worker or worker's dependent and uses it as payment against debt owed to YWCHSB. This is the preferred method of recovery when feasible. YWCHSB may withhold full or partial compensation benefits from the worker or dependent until it has fully recovered the overpaid compensation.

YWCHSB may also use set-off against future compensation benefits, excluding necessary medical aid, to achieve full repayment.

b) Debt Repayment

Debt repayment is when a worker or worker's dependent repays money owed to YWCHSB. For example, compensation payments made to a worker or dependent beyond the period of entitlement are recovered through debt repayment. YWCHSB may require repayment in full or by installments.

c) Civil Legal Action

If all efforts fail to recover an overpayment, YWCHSB may commence an action against the worker or worker's dependent for the outstanding overpayment. This will be decided on a case by case basis. If YWCHSB determines the overpayment resulted from fraud or deliberate misrepresentation, it may pursue civil legal action while also using other methods of recovery.

4. Impact on Employers

If YWCHSB does not collect an overpayment, and the overpayment has the potential to materially affect an industry's assessment premiums, YWCHSB will relieve the industry of the cost of the overpayment.

ROLES AND RESPONSIBILITIES

YWCHSB

YWCHSB decision-makers are responsible for determining compensation based on the best information available and for accurately documenting calculations of compensation on the worker's claim file. Decision-makers are also responsible for notifying a worker, the dependents of a deceased worker, or the worker's employer of any decision affecting the claim for compensation as soon as practicable, in accordance with section 16 of the *Act*.

Workers

Workers are responsible for providing the YWCHSB with complete, accurate and timely information required for their claim for compensation. They are responsible for informing YWCHSB about any change in circumstances that affects their claim, in accordance with sections 14 and 40 of the *Act*. This includes a change in the condition of their work-related injury or a change in income, including receiving notification of eligibility to receive CPP/QPP disability benefits. Workers or workers' dependents are responsible for notifying YWCHSB if they notice they are receiving overpayments of compensation.

Employers

Employers are responsible for providing the YWCHSB with complete, accurate and timely earnings information, as well as any information on changes in circumstances that affects a worker's claim, in accordance with sections 10, 40 and 83 of the *Act*.

APPLICATION

This policy applies to the Board of Directors, President/CEO and staff of the YWCHSB; to the Workers' Compensation Appeal Tribunal; and to employers, workers and workers' dependents covered by the *Act*.

EXCEPTIONAL CIRCUMSTANCES

In situations where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would result in an unfair or an unintended result, YWCHSB will decide the case based on its individual merits and justice in accordance with YWCHSB's policy, "Merits and Justice of the Case". Such a decision will be considered for that specific case only and will not be precedent setting.

<hr/> <p>Chair</p>

APPEALS

Decisions made by YWCHSB under this policy can be appealed in writing either to the hearing officer of YWCHSB in accordance with subsection 53(1) of the *Act* or to the Workers' Compensation Appeal Tribunal in accordance with subsection 54(1) of the *Act*. Notice of the appeal must be filed within 24 months of the date of the decision by YWCHSB, in accordance with section 52 of the *Act*.

EFFECTIVE DATE

This policy is effective January 1, 2012 and applies to overpayments identified on or after that date.

LEGISLATIVE REFERENCES

Act sections 10, 14, 16, 40, 52, 53, 54, 83, 123.
Financial Administration Act, R.S.Y. 2002

POLICY REFERENCES

EN-02, "Merits and Justice of the Case"
EL-03, "Payment of Interest on Compensation Benefits"

HISTORY

EL-04, "Recovery of Overpaid Compensation," effective July 1, 2008,
revoked December 31, 2011
CL-43, "Recovery of Overpaid Compensation," effective November 17, 1993,
revoked July 1, 2008.