 Yukon Workers' Compensation Health and Safety Board	Part:	Entitlement	
	Board Approval:	<i>Original Signed by Chair</i>	Effective Date: July 1, 2008
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	Board Order:		Review Date:

END OF LOSS OF EARNINGS BENEFITS

When referencing any of the return to work policies, it is important to recognize the responsibilities of the employer and worker within the context of the complete return to work process. Therefore, the whole return to work model must be considered in its entirety and not only the specific guidelines under an individual policy.

GENERAL INFORMATION

Loss of earnings benefits compensate an injured worker for earnings the worker has lost because of a work-related injury. This policy outlines circumstances when these benefits end.

PURPOSE

This policy provides direction to decision-makers of the Yukon Workers' Compensation Health and Safety Board (YWCHSB) on the situations in which a worker is no longer entitled to loss of earnings benefits.

Despite the end of loss of earnings benefits, a worker may still be eligible for other workers' compensation benefits, such as health care services or permanent impairment awards.

DEFINITIONS

- 1. Loss of earnings benefits:** benefits paid under section 22 of the *Workers' Compensation Act* S.Y. 2008 (the "Act") to an injured worker to compensate the worker for earnings (defined in section 3 of the *Act*) lost because of a work-related injury.
- 2. Maximum medical improvement:** the point at which an injured worker has recovered to the best possible condition, has stabilized at that condition and is unlikely to significantly improve.

3. Old Age Security benefits: benefits available under Part 1 of the *Old Age Security Act*, R.S., 1985, c.0-9. These include the Old Age Security pension, the Guaranteed Income Supplement and the Allowance.

4. Recurrence: a situation in which a worker has had a work-related injury, has reached maximum medical improvement, has returned to work and subsequently requires treatment directly related to or caused by the original work-related injury.

PREVENTION

To prevent work-related injuries, employers must ensure that workplaces, equipment and procedures are safe and appropriate and that workers are thoroughly trained to perform their work safely. Workers must take all necessary safety precautions, comply with health and safety instructions and promptly report hazards and injuries to supervisors.

POLICY STATEMENT

A worker's loss of earnings benefits end when the worker has recovered from the work-related injury, returned to work and no longer requires loss of earnings benefits, reached pre-injury earnings capacity, reached the age of eligibility for Old Age Security benefits, retired, been incarcerated, died or had benefits terminated for other reasons.

1. Recovery from Work-related Injury

A worker's loss of earnings benefits end when, in the opinion of the YWCHSB, the worker has recovered from the work-related injury, regardless of whether the worker has actually returned to work.

2. Return to Work

A worker's loss of earnings benefits end when the worker has returned to work, is no longer experiencing loss of earnings and the employer is paying the worker his or her full pre-injury earnings. See YWCHSB policy, "Return to Work -- Overview".

3. Pre-injury Earnings Capacity

A worker's loss of earnings benefits end when a worker has reached maximum medical improvement and the YWCHSB has determined that the worker is capable of earning his or her pre-injury earnings under YWCHSB policy, "Determining Suitable Employment and Earnings Capacity".

4. Age of Eligibility for Old Age Security Benefits

A worker's loss of earnings benefits end when the worker has reached the age that a worker is entitled to receive Old Age Security benefits, in accordance with subsection 4(2) of the *Act*.

The exception is for a worker who on the day of injury is at least the age, less two years, that a worker becomes eligible to receive Old Age Security benefits. In that case, the worker is entitled to loss of earnings benefits for the same work-related injury for up to 24 months, in accordance with subsection 4(3) of the *Act*.

Examples:

a) *A worker injured at age 62 is entitled to loss of earnings benefits until she returns to work and her earnings loss ends, or until she turns 65 (the age at which workers become entitled to receive Old Age Security benefits), whichever comes first.*

If she returns to work at age 66 and has a recurrence of the same injury, she is not eligible for loss of earnings benefits.

b) *A worker injured at age 63 is entitled to loss of earnings benefits until he returns to work and his earnings loss ends, or for a period of up to 24 months, whichever comes first.*

If he returns to work after one month and has a new work-related injury six weeks later at age 64, he is entitled to a maximum of another 24 months of earnings loss benefits.

c) *A worker injured at age 68 is entitled to loss of earnings benefits until she returns to work and her earnings loss ends, or for a period of 24 months, whichever comes first.*

If she returns to work after six months and has a recurrence of the same work-related injury two years later at age 70, she is entitled to loss of earnings benefits up to a maximum of the 18 months remaining in her 24-month period for that injury.

5. Retirement

Loss of earnings benefits shall not be paid to a worker who has retired from his/her pre-injury employer. The YWCHSB may determine that a worker has retired if evidence supports, on the balance of probabilities (see YWCHSB policy, "Merits and Justice of the Case"), the conclusion that the worker has voluntarily retired or withdrawn from the work force.

6. Incarceration

Under subsection 33(1) of the *Act*, loss of earnings benefits end to a worker during the period the worker is incarcerated in a penal institution.

In such cases, if a worker is incarcerated on a charge but has not been convicted of that charge (for example, the worker is in custody awaiting the outcome of a trial), the YWCHSB may divert the loss of earnings benefits that would have been payable during the incarceration period to the worker's dependents.

However, if the worker is convicted of a charge for which he or she has been incarcerated, no loss of earnings benefits shall be diverted after the date of the conviction.

When a worker is released from a penal institution, the YWCHSB may resume payment of loss of earnings benefits to the worker, if those benefits are not ended due to the other circumstances outlined in this policy.

7. Death

A worker's loss of earnings benefits end when a worker dies. Other compensation benefits are payable to the spouse and/or dependents when a worker dies as a result of a work-related injury, as outlined in sections 43 to 49 of the *Act*.

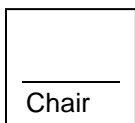
8. Termination of Benefits

A worker's loss of earnings benefits end when the YWCHSB determines the worker has failed to mitigate his or her injury in accordance with section 14 of the *Act*. Benefits are terminated in accordance with subsection 14(2) of the *Act* (see YWCHSB policy, "Mitigation of Loss").

Similarly, a worker's loss of earnings benefits end when the YWCHSB determines the worker has failed to co-operate in return to work in accordance with subsection 40(2) of the *Act*. Benefits are terminated in accordance with subsection 40(6) of the *Act* (see YWCHSB policy, "Duty to Co-operate, Part 4 of 4: Penalties for Non-co-operation").

9. Fraud

A worker's loss of earnings benefits end if it is determined that the worker received the benefits by providing false information, as determined under section 111 of the *Act* and YWCHSB policy, "Fraud". When a worker has received loss of earnings benefits to which he or she was not entitled, the worker shall repay those benefits to the YWCHSB in accordance with section 123 of the *Act* and YWCHSB policy, "Recovery of Overpaid Compensation", in addition to any penalties that may be levied under section 111 of the *Act*.



ROLES AND RESPONSIBILITIES

Workers are responsible for providing the YWCHSB with full, timely and accurate information on any matter related to the worker's claim for compensation and on any change in circumstances that affects the worker's claim for compensation, in accordance with subsections 14(1) (d) and 14(1) (e) of the *Act*, the circumstances described in this policy and YWCHSB policies, "Mitigation of Loss" and "Duty to Co-operate, Part 2 of 4: Roles and Responsibilities".

Employers are responsible for providing the YWCHSB with full, timely and accurate information concerning a worker's employment information, earnings, injury and return to work in accordance with sections 10, 40 and 83 of the *Act* and with YWCHSB policy, "Duty to Co-operate, Part 2 of 4: Roles and Responsibilities".

YWCHSB decision-makers are 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 is practicable, in accordance with section 16 of the *Act*.

APPLICATION

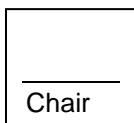
This policy applies to the Board of Directors, President/CEO and staff of the YWCHSB; to the Workers' Compensation Appeal Tribunal; and to employers and workers covered by the *Act*.

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, the YWCHSB will decide the case based on YWCHSB policy, "Merits and Justice of the Case". Such a decision will be considered for that specific case only and will not be precedent setting.

APPEALS

Decisions made by the YWCHSB under this policy can be appealed directly in writing either to the hearing officer of the YWCHSB in accordance with subsection 53(1) of the *Act* or to the Appeal Tribunal of the YWCHSB 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 the YWCHSB, in accordance with section 52 of the *Act*.


Chair

ACT REFERENCES

Sections 3, 4, 10, 14, 16, 22, 33, 40, 43, 44, 45, 46, 47, 48, 49, 52, 53, 54, 83, 111 and 123

Old Age Security Act, R.S., 1985, c.0-9

POLICY REFERENCES

EL-04, "Recovery of Overpaid Compensation"

EN-02, "Merits and Justice of the Case"

RE-01, "Return to Work -- Overview"

RE-02-2, "Duty to Co-operate, Part 2 of 4: Roles and Responsibilities"

RE-02-4, "Duty to Co-operate, Part 4 of 4: Penalties for Non-co-operation"

RE-03, "Mitigation of Loss"

RE-13, "Determining Suitable Employment and Earnings Capacity"

GN-05, "Fraud"

HISTORY

CL-45, "Loss of Earnings for a Worker age 63 or Over," effective January 1, 1993, revoked July 1, 2008.