 Yukon Workers' Compensation Health and Safety Board	Part:	Entitlement		
	Board Approval:	<i>Original Signed by Chair</i>	Effective Date:	July 1, 2008
	Number:	EN-07	Last Revised:	
	Board Order:		Review Date:	

PRE-EXISTING CONDITIONS

GENERAL INFORMATION

Where a factor other than the work injury is negatively affecting the worker's ability to return to the pre-injury earning level it is important to identify them as soon as possible.

For the purpose of this policy, a pre-existing condition is any condition unrelated to a work injury which may affect recovery or the extent of injury. Pre-existing conditions may be known to exist prior to a work injury (usually because they caused symptoms), or they may develop post-injury.

Where a worker has completed necessary medical treatments but his or her ability to return to the pre-injury earning level is negatively affected by a pre-existing condition, compensation entitlement may be adjusted to reflect the impact of the pre-existing condition.

PURPOSE

This policy provides direction to Yukon Workers' Compensation Health and Safety Board (YWCHSB) decision-makers concerning claims that may involve pre-existing conditions.

DEFINITIONS

- 1. Acceleration:** when the work-related incident has worsened or caused a deterioration of the pre-existing condition causing permanent damage.
- 2. Aggravation:** when there is a temporary worsening of a pre-existing condition caused by a work-related incident.
- 3. Compensation:** loss of earnings benefits, health care assistance, rehabilitation and/or a permanent impairment award.
- 4. Enhancement:** when a work-related incident causes an acceleration or aggravation of a pre-existing condition that prolongs the recovery period.

5. Pre-Existing Condition: is, unless otherwise stated, a non-compensable condition that is based on a confirmed diagnosis or medical opinion existing prior to the current work-related incident. The pre-existing condition:

- a) may have been known prior to the work-related incident; or
- b) may have become known or activated as a result of the work-related incident;
or
- c) may have become known after, but not in relation to, the work-related incident.

6. Psychological Disorder: a condition related to the mind and mental processes that has caused an individual to not function normally in their daily life and work.

PREVENTION

Under Section 14 of the *Workers' Compensation Act* S.Y. 2008 (the "Act"), an injured worker is responsible for taking all reasonable steps to reduce or eliminate any impairment by seeking and co-operating in health care or treatment recommended by the YWCHSB, and participating in any medical or other evaluations required by the YWCHSB.

To prevent work-related injuries in the first place, employers must ensure that workplaces, procedures and equipment are safe 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.

CONFIDENTIALITY

All information obtained in the administration of the *Act* is confidential subject to sections 56 and 117 of the *Act*, and subject to YWCHSB policies, "Release of Claims Information to Employers" and "Release of Information".

POLICY STATEMENT

Non-work-related pre-existing conditions are non-compensable. However, a work-related incident may result in the worsening of a pre-existing condition. In these cases, a worker may be entitled to compensation in relation to the portion of the pre-existing condition that has worsened. This worsening may be either temporary (aggravated) or permanent (accelerated).

Where a pre-existing condition has not been worsened by the work-related incident, the pre-existing condition is non-compensable. However, if it is necessary for the successful management of the work-related injury, or if it reduces the injured worker's recovery time from the work-related injury, the YWCHSB may, in its discretion, provide compensation for the pre-existing condition.

1. Claim Adjudication

Whether or not a pre-existing condition exists, all claims for compensation will be adjudicated in accordance with YWCHSB policy, "Arising Out of and In the Course of Employment". If a person is a worker under the Act and his or her incapacity arose out of and in the course of employment, the worker's claim will be accepted. Symptoms of a pre-existing condition could be considered a work-related incapacity, and therefore compensable, if they have been determined to have arisen out of and in the course of employment.

Example: a worker has an unknown allergy to latex. As part of his employment, the worker was required to use latex gloves. The worker experienced an unanticipated allergic reaction. In this case, the worker's symptoms are compensable because they arose out of and in the course of his employment.

At times, work activities have the effect of drawing to the attention of the worker the existence of their pre-existing condition by way of symptoms. The symptoms, however, are not considered work-related because although they arose in the course of the worker's employment, they did not arise out of the worker's employment.

Example: a worker who experiences hand or arm pain due to an arthritis condition affecting that limb will not be entitled to compensation simply because he or she experiences pain in that limb from performing employment activities. Similarly, a worker with a history of intermittent pain and numbness in a hand/wrist due to a pre-existing median nerve entrapment (carpal tunnel syndrome) will not be entitled to compensation just because his or her work activities also produce the same symptoms.

To be compensable, the evidence must establish that the employment activity aggravated or accelerated the pre-existing condition to the point of injury in circumstances where such an injury would not have occurred "but for" the employment.

a) Compensable Pre-Existing Conditions

If a pre-existing condition was work-related, (i.e. the worker had an accepted claim in the past), the decision-maker must decide if the aggravation or acceleration should be treated as a continuation of an earlier claim (i.e. there is already an open claim for the injury) or a recurrence (i.e. the injury requires a re-opening of an earlier claim). A new and distinct injury (subsequent injury) may

also occur as a consequence of a compensable pre-existing condition. Where the pre-existing condition was work-related, the YWCHSB is responsible to provide compensation.

b) Non-compensable Pre-Existing Conditions

The decision-maker may determine that the worker's pre-existing condition is not work-related. The YWCHSB will provide compensation for a worker's non-compensable pre-existing condition that has been aggravated as a result of a work-related incident. Once the pre-existing condition has returned to its pre-incident state, the YWCHSB is no longer responsible for compensation.

If a pre-existing condition has been accelerated as a result of a work-related incident, the YWCHSB will provide compensation only for the accelerated portion of the pre-existing condition.

If a pre-existing condition is degenerative in nature, the YWCHSB is responsible to return the worker to the point he or she would have been if not for the work-related incident. The YWCHSB is not responsible for the natural progression of a degenerative pre-existing condition into the future.

c) "Thin Skull" – The Pre-Existing Condition Becomes Compensable.

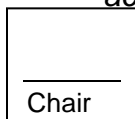
The "thin skull" rule is a long-standing principle in tort law that suggests you take your victims as you find them. Applied to workers' compensation, this means that a worker's injuries are compensable even if they are unexpectedly severe for that individual, owing to a pre-existing condition.

Example: A transportation worker is moving a 300 lb. load up a flight of stairs when the load slips, causing fright and strain. The worker has a heart attack. The medical evidence indicates a deteriorating condition of the heart. But it supports a conclusion that the worker could well have survived for months or years without a heart attack had it not been for this unusually strenuous experience. Based on the balance of probabilities, the heart attack would be considered work-related, and therefore compensable.

d) "Crumbling Skull" – The Pre-Existing Condition Is Not Compensable

The "crumbling skull" rule is another long-standing principle in tort law (though less known than the "thin skull rule"). The principle is intended to differentiate cases where 'what you see' is similar to 'what you would have expected' if not for the work-related incident.

Example: the principle would apply to exclude compensation where a worker with a heart condition is climbing the stairs to work and suffers a heart attack. It is only chance or coincidence whether it happened at work, at home or elsewhere. The disability is one that the claimant would not have escaped regardless of the work activity.



2. Managing Claims with Pre-Existing Conditions

a) When the Pre-Existing Condition Prolongs Expected Healing Time

In some cases, a pre-existing condition may be present, but it has not been aggravated or accelerated by the work-related incident. However, because of the pre-existing condition, treatment and rehabilitation may take longer, exceeding the expected healing time for the work-related injury. In these cases, loss of earnings benefits may continue over the extended period of treatment or rehabilitation.

The YWCHSB may, in its discretion, also provide treatment for the pre-existing condition itself, if it is necessary for the successful management of the work-related injury or reduces the injured worker's recovery time. Because the pre-existing condition was not aggravated or accelerated, once the compensable injury is resolved, the YWCHSB has fulfilled its responsibility under the *Act* and is not responsible for any further loss of earnings benefits, health care assistance or rehabilitation in relation to the pre-existing condition.

Example: a worker suffers from alcoholism and consequently is missing many of the physical therapy sessions required for the rehabilitation of her broken leg. The decision-maker may provide treatment for the pre-existing alcoholism, but once the broken leg is resolved, the YWCHSB is not responsible for any further alcoholism treatment.

b) When the Work-Related Incident Aggravates or Accelerates the Pre-Existing Condition

Earnings loss will be paid according to YWCHSB policies "Loss of Earnings Benefits" or "Optional Coverage for Sole Proprietors, Partners or Employers".

Health care assistance will be provided according to section 36 of the *Act*.

Rehabilitation will be provided according to YWCHSB policy, "Vocational Rehabilitation".

Earnings loss may be paid not only during the normal recovery period for a work-related incident, but also for any period of enhancement. Health care assistance and rehabilitation will be provided until the worker's pre-existing condition returns to its pre-incident state.

c) Alcoholism, Drug Dependency and Psychological Disorders

Alcoholism, drug dependency and psychological disorders are conditions that may be aggravated or accelerated by a work-related incident. With these, as with any other pre-existing condition, the decision-maker must decide whether there is an incapacity arising out of and in the course of employment to determine eligibility for compensation benefits.

Conversely, a worker may suffer from alcoholism, drug dependency or a psychological disorder as a pre-existing condition, but the condition has not been aggravated or accelerated by the work-related injury. In these cases, refer to “When the Pre-Existing Condition Prolongs Expected Healing Time.”

d) **Degenerative Pre-Existing Conditions**

A degenerative pre-existing condition may deteriorate due to natural progression during the course of rehabilitation for the work-related incident. In these cases, the YWCHSB is only responsible to return the worker to the point he or she would have been if not for the work-related incident.

Where the decision-maker determines that a pre-existing condition is degenerative in nature, medical evidence will be sought with respect to how the worker’s condition would have progressed without the occurrence of the work-related incident.

3. Permanent Partial Impairment Awards

In some cases, the worker’s pre-existing condition will never return to its pre-incident state. In the case of a permanent partial impairment, the YWCHSB will determine what proportion of the permanent impairment can be attributed to the work-related incident and what portion can be attributed to the pre-existing condition or other cause. Permanent partial impairment awards will be paid only for the proportion of the permanent impairment that can be attributed to the work-related incident. (See also “Degenerative Pre-existing Conditions”.)

A proportioned permanent impairment award will be assessed according to YWCHSB policy, “Permanent Impairment” and by determining:

a) the value of the total clinical impairment of the worker following the work-related incident,

Less

b) the value of the total clinical impairment of the worker prior to the work-related incident (i.e. the clinical impairment value of the pre-existing condition). Permanent impairment will be assessed according to the “Guides to the Evaluation of Permanent Impairment” set by the American Medical Association. If the worker’s pre-existing condition is not measurable, the YWCHSB Medical Consultant will estimate the degree of the pre-existing condition based on the evidence available.

The YWCHSB will not proportion the permanent impairment award when the work-related injury and its immediate consequences are so severe that the permanent impairment would have resulted regardless of the pre-existing condition.

APPLICATION

This policy applies to the Board of Directors, including the President/CEO, staff of the YWCHSB, the Workers' Compensation Appeal Tribunal, 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 its individual merits and justice in accordance with YWCHSB policy, "Merits & 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 to the hearing officer of the YWCHSB in accordance with subsection 53(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*.

ACT REFERENCES

Sections 14, 36, 52, 53, 56 and 117(1)

POLICY REFERENCES

AP-04, "Release of Claims Information to Employers"
EA-04, "Optional Coverage for Sole Proprietors, Partners or Employers"
EL-01, "Loss of Earnings Benefits"
EN-01, "Arising Out of and In the Course of Employment"
EN-02, "Merits and Justice of the Case"
EN-12, "Permanent Impairment"
GN-01, "Release of Information"
RE-10, "Vocational Rehabilitation"

HISTORY

CL-47, "Pre-Existing Conditions," effective January 1, 2008, revoked July 1, 2008.
Policy # 51, "Pre-Existing Conditions – Aggravation".
Policy #39, "Reserve for Enhanced Disabilities".