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|  Yukon Workers' Compensation Health and Safety Board | Part: | Entitlement | |
| | Board Approval: | <i>Original Signed by Chair</i> | Effective Date: July 1, 2008 |
| | Number: | EN-12 | Last Revised: |
| | Board Order: | 2008 | Review Date: |

PERMANENT IMPAIRMENT

GENERAL INFORMATION

A worker who has had a work-related injury may be entitled to benefits that compensate him or her for a permanent impairment, which is a permanent loss to a part, function or system of the body.

PURPOSE

This policy provides guidance to decision-makers of the Yukon Workers' Compensation Health and Safety Board (YWCHSB) on the determination and assessment of permanent impairments, as well as on the calculation of and payment of permanent impairment awards to injured workers on or after July 1, 2008, where the date of injury is on or after January 1, 1993.

DEFINITIONS

- 1. Annuity:** the payment of money in a fixed amount for a fixed or a variable period of time.
- 2. Board of Directors:** the individuals appointed by the Commissioner in Executive Council to collectively provide governance to the YWCHSB.
- 3. Decision-maker:** a YWCHSB staff member who has responsibility for decisions on an injured worker's claim.
- 4. Injury:** under section 3 of the *Workers' Compensation Act* S.Y. 2008 (the "*Act*"), injury means:
 - a) an injury as a result of an event, or series of events, occasioned by a physical or natural cause;
 - b) an injury as a result of a wilful and intentional act, not being the act of the worker;

- c) a disablement, but does not include the disablement of mental stress or disablement caused by mental stress, other than post-traumatic stress;
- d) an occupational disease, which includes a disease from causes and conditions peculiar to or characteristic of a particular trade or occupation or peculiar to the particular employment; but does not include an ordinary disease of life; or
- e) death as a result of an injury.

5. Maximum wage rate: under section 3 of the *Act*, maximum wage rate for a year means:

- a) \$74,100 as of January 1, 2008; and
- b) commencing January 1, 2009, and in each year thereafter, the amount resulting from adjusting the previous year's maximum wage rate by:
 - i) the per cent change in the Consumer Price Index for Whitehorse, calculated by using the per cent change between the average index for the twelve month period ending October 31st of the previous year and the same time period one year earlier; however,
 - ii) despite clause a), if the per cent change is greater than four per cent (4%), the per cent change to be used will be four per cent (4%); and, if the per cent change is less than zero per cent (0%), the per cent change to be used will be zero per cent (0%).

Maximum wage rates for 1993 – 2007 are listed in Appendix A to this policy.

6. Medical Consultant: a medical practitioner, recognized under the *Medical Profession Act*, who, on behalf of the YWCHSB:

- provides medical opinions;
- reviews and interprets medical reports;
- participates in the management of injured workers' cases;
- examines injured workers;
- comments on medical treatment options; and
- provides assessments and ratings on permanent impairments.

7. Permanent impairment: under section 3 of the *Act*, a permanent impairment “means a work-related injury, not including death, that is not temporary including a disfigurement.” To be a permanent impairment the injury must cause a loss; a loss of use; or a permanent disturbance to a body part, system or function.

PREVENTION

Under section 14 of 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.

POLICY STATEMENT

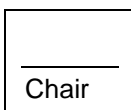
In some cases work-related injuries may cause conditions that diminish or disturb the function of a worker’s body that may last for the rest of a worker’s life. A worker may be permanently disfigured, lose parts of the body or permanently lose function of parts or systems of the body. These workers are entitled to permanent impairment awards.

Examples of permanent impairments may include, but are not limited to, loss of limbs; permanent and measurable loss of movement in joints; loss of hearing; loss of sight or paralysis.

A permanent impairment award is not related to a worker’s ability or inability to do activities such as sports or hobbies, or to do work.

For example: a web designer paralyzed from the waist down has a severe impairment, but is still able to work. A pianist who has lost a finger may have a smaller impairment, but be unable to perform pre-injury work.

For this reason, as section 20 of the *Act* states, a permanent impairment award is separate from compensation for loss of earnings.



1. Timing of the Assessment

A permanent impairment assessment shall be done when the worker has reached maximum medical improvement and evidence of a permanent impairment exists. This means the worker has recovered to the best possible condition, has stabilized at that condition and is unlikely to significantly improve.

However, the YWCHSB may do an interim assessment before the point of maximum medical improvement, if a work-related injury is irreversible. These types of injuries include, but are not limited to, loss of limbs or digits, paraplegia and quadriplegia.

2. Determining and Assessing a Permanent Impairment

YWCHSB decision-makers determine entitlement for permanent impairment awards on accepted claims for compensation. They do this by consulting a Medical Consultant who shall assess and determine if a permanent impairment exists, and shall determine the percentage or rating of the impairment.

The rating shall be based on the American Medical Association's Guide to Evaluation of Permanent Impairment (AMA Guides) -- the most current edition adopted by the Board of Directors.

In cases where a worker has a permanent impairment, no rating shall be less than one per cent (1%). If a worker has multiple permanent impairments, the rating will be based on the effect on the whole person, using the combined values charts in the AMA Guides. No rating shall be more than one hundred per cent (100%).

3. Death of an Injured Worker

If a worker dies as a result of a work-related injury before the YWCHSB has assessed and rated the worker's permanent impairment, the YWCHSB shall not make a permanent impairment award to the worker or the worker's dependents, in accordance with subsection 20(4) of the *Act*.

However, if a worker has had his or her permanent impairment assessed, and dies of non-work-related causes before the permanent impairment award is paid, the YWCHSB shall pay the award to the worker's dependents.

4. Calculations of Awards

A YWCHSB decision-maker will calculate the permanent impairment award in accordance with subsection 20(2) of the *Act*. He or she will multiply the percentage of permanent impairment by one hundred twenty-five per cent (125%) of the maximum wage rate that was in effect for the year the injury occurred.

Examples:

1. *A worker severely injures her knee during a fall at work in 2008. Following all therapy and surgery, the medical consultant concludes the worker's injury has resulted in a five per cent (5%) permanent impairment. The calculation is as follows:*

*125% X \$74,100 (2008 maximum wage rate) = \$92,625.00
5% (percentage of permanent impairment) X \$92,625.00 = \$4,631.25
The permanent impairment award is **\$4,631.25***

2. *A worker falls from a ladder and breaks both elbows and both wrists in 2008. After multiple surgeries, the Medical Consultant determines the worker has limited function and permanent impairments in all four joints. To determine the percentage of permanent impairment, the Medical Consultant considers the overall impact on the whole person, based on the AMA Guides, rather than adding up the individual value of each impairment. In this case, the permanent impairment percentage is twenty-five per cent (25%). The calculation is as follows:*

*125% X \$74,100 (2008 maximum wage rate) = \$92,625.00
25% (percentage of permanent impairment) X \$92,625.00 = \$23,156.25
The permanent impairment award is **\$23,156.25***

5. Reviews of Permanent Impairment Awards

The YWCHSB may review a permanent impairment award no earlier than five years after the initial assessment. Subsequent reviews of the same permanent impairment may occur no earlier than five years after the most recent review.

However, if new medical evidence supports the conclusion that the permanent impairment has deteriorated substantially, the YWCHSB may conduct a review of a permanent impairment award before the five-year period has elapsed.

Example:

A worker has a knee injury and eventually receives a permanent impairment award based on an impairment rating of four per cent (4%). Three years later, the worker needs to have joint replacement surgery on the knee. As this indicates a substantial deterioration of the worker's knee impairment and constitutes new evidence, the YWCHSB may conduct a review of the permanent impairment award before the five year minimum review period has elapsed.

If a review shows that the rating or percentage of impairment has increased, the YWCHSB will calculate the additional award in accordance with subsection 20(2) of the Act. This review and calculation procedure shall apply to reviews of permanent impairment awards made since January 1, 1993. The calculation procedure is as follows:

The YWCHSB determines the difference in the percentage or rating of the permanent impairment between the initial assessment and the review. The YWCHSB will multiply that difference in percentage by one hundred twenty-five per cent (125%) of the maximum wage rate of the year in which the injury occurred.

Example:

A 45 year old worker injures his back in 1993. He receives a permanent impairment award of \$4,000, based on a permanent impairment of five per cent (5%). His condition worsens. In 2008 the YWCHSB reviews his case and determines his impairment is now at eight per cent (8%). His additional permanent impairment award is calculated as follows:

*125% X \$50,000 (maximum wage rate in 1993) = \$62,500
8% (new impairment rating) - 5% (1993 impairment rating) = 3%
3% (difference in impairment ratings) X \$62,500 = \$1875.00
The worker receives an additional permanent impairment award of **\$1875.00***

6. Lump Sum or Annuity

A worker may choose to receive his or her permanent impairment award as a single lump sum award or as an annuity. The exceptions are for smaller awards. As required by subsection 32(3) of the Act, an annuity for a permanent impairment award must be at least the minimum amount set by an Order of the Board of Directors.

ROLES AND RESPONSIBILITIES

YWCHSB decision-makers are responsible for identifying a potential permanent impairment, for consulting the Medical Consultant to determine the existence and rating of a permanent impairment, for calculating permanent impairment awards and for documenting the calculations on the worker's claim file.

The Medical Consultant is responsible for determining the existence of a permanent impairment, for assessing and determining the percentage or rating of an injured worker's permanent impairment pursuant to the AMA Guides and for documenting that information on the worker's claim file.

Workers are responsible for seeking and co-operating fully in health care or treatment recommended by the YWCHSB and for attending any medical or other evaluations required by the YWCHSB.

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 unfair or 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 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*.

Chair

ACT REFERENCES

Sections 3, 14, 20, 32, 52 and 53
Medical Professions Act

POLICY REFERENCES

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

HISTORY

CL-46, "Permanent Impairment" (Page 3 Amended 94/03/16) – effective March 8, 1994, revoked July 1, 2008

APPENDIX A

MAXIMUM WAGE RATES 1993-2008

| Year | Maximum. Wage Rate | 125% of Maximum Wage Rate |
|------|--------------------|---------------------------|
| 1993 | \$50,000 | \$62,500 |
| 1994 | \$50,000 | \$62,500 |
| 1995 | \$52,000 | \$65,000 |
| 1996 | \$51,400 | \$64,250 |
| 1997 | \$54,200 | \$67,750 |
| 1998 | \$54,200 | \$67,750 |
| 1999 | \$57,500 | \$71,875 |
| 2000 | \$60,000 | \$75,000 |
| 2001 | \$62,400 | \$78,000 |
| 2002 | \$65,100 | \$81,375 |
| 2003 | \$66,200 | \$82,750 |
| 2004 | \$65,800 | \$82,250 |
| 2005 | \$67,000 | \$83,750 |
| 2006 | \$69,500 | \$86,875 |
| 2007 | \$73,200 | \$91,500 |
| 2008 | \$74,100 | \$92,625 |