

Chapter: Benefits

Legislative authority: N/A

Prevention statement

Preventing injuries is one of the most important responsibilities in the workplace. The Workers' Safety and Compensation Act (the 'Act') establishes the responsibilities of all workplace parties to work together to ensure the physical and psychological health and safety of workers. When injuries do occur, workers and employers must continue to work together to facilitate an injured worker's early and safe return to health and work.

Purpose

This policy provides information on the principles that guide the Workers' Safety and Compensation Board in identifying and recovering overpayments made to a worker or a dependant of a deceased worker. The principles attempt to balance the board's fiscal responsibilities with the interests of workers, dependants of a deceased worker and employers.

Definitions

board means the Workers' Safety and Compensation Board

deliberate misrepresentation means any action, inaction, omission or misinformation which, in the board's opinion, constitutes a willful attempt by a worker or a dependant of a deceased worker 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.

overpayment means any payment of compensation by the board to a worker or to a dependant of a deceased worker that is more than the worker or dependant of a deceased worker is entitled to under the *Act*, regulations or board policy. This includes interest that may have been paid

Policy statement

1. General

An overpayment of compensation occurs when a worker or dependant of a deceased worker is paid compensation to which they are not entitled.

2. Identification of overpayment

A worker or a dependant of a deceased worker may receive an overpayment because of events or actions such as, but not limited to:

- a. entitlement change;
- b. receipt of other employment-related earnings;
- c. duplicate payments;
- d. misinformation;
- e. incomplete or incorrect wage information;
- f. receiving long-term compensation based on estimated earning capacity, when the worker's actual earnings are higher;
- g. worker or dependant of a deceased worker failing to provide relevant, accurate, complete or timely information;
- h. miscalculation, including administrative error;
- i. incorrect payment of survivors' benefits; or
- j. fraud or deliberate misrepresentation.

When an overpayment is detected, the board will notify the worker or dependant of a deceased worker of the amount and the cause of the overpayment.

If the worker or dependant of a deceased worker notices an overpayment, they must notify the board as soon as possible.

2.1 Reconsiderations and appeals

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

3. Decision to recover

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

- 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 dependant of a deceased worker;
- e. the status of the claim; and
- f. the time that has elapsed since the overpayment.

In most cases of overpayments due to fraud or deliberate misrepresentation, the board will recover the overpayment. In these cases, the recovery will not affect the board's decision to proceed with criminal charges.

4. Situations when the board may not recover

Overpayments in the following circumstances are not normally subject to recovery:

- a. the overpayment is fifty dollars or less.
- b. the board determines that recovery would result in severe, long-term financial hardship to the worker or dependant of a deceased worker. (The exceptions are with fraud or deliberate misrepresentation where, in most cases, the board will recover the overpayment.

- 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 dependant of a deceased worker.
- d. the overpayment is the result of an administrative error of which the worker or dependant of a deceased worker could not reasonably be expected to be aware.
- e. the board has paid the worker or dependant of a deceased worker provisional benefits under policy 3.1 Loss of Earnings Benefits. These are not considered overpayments.

5. Method of recovery

The board 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 dependant of a deceased worker. The board will consider the financial circumstances of the worker or dependant of a deceased worker.

a. Set-off

Set-off is when the board withholds a portion of or all compensation payable to a worker or dependant of a deceased worker until the board has fully recovered the overpaid compensation. This is the preferred method of recovery when feasible.

b. Debt repayment

Debt repayment is when a worker or dependant of a deceased worker repays money owed to the board, either in full or by installments.

c. Civil legal action

The board may commence a civil legal action against the worker or dependant of a deceased worker for the outstanding overpayment. This will be decided on a case by case basis.

6. Written decisions

All board decisions concerning recovery and method of recovery of overpayments will be provided to the affected worker or dependant of a deceased worker in writing, with reasons, in compliance with the Act.

History

EL-04 Recovery of Overpaid Compensation, effective January 1, 2016, revoked July 1, 2022

EL-04 Recovery of Overpaid Compensation, effective January 1, 2012, revoked January 1, 2016

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