

 Yukon Workers' Compensation Health and Safety Board	Part:	Entitlement	
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	Board Order:		Review Date:

RECURRENCE OF INJURY

GENERAL INFORMATION

It is common for decision-makers to receive new medical information, or a request from a worker to reinstate benefits, after the end date of benefits. The YWCHSB decision-maker has to decide whether to authorize benefits based on the original adjudication decision, or whether further evidence is necessary to support a new adjudication decision.

Section 26 of the *Workers' Compensation Act S.Y. 2008* (the "Act") specifies that when a worker who was previously in receipt of compensation has suffered a recurrence of their work-related injury, their loss of earnings benefit rate is set based on the greater of the worker's average weekly earnings immediately before the injury arose, and the average weekly earnings at the time of the recurrence.

Section 15 grants authority to decision-makers of Yukon Workers' Compensation Health and Safety Board (YWCHSB) to determine the duration and degree of the work-related injury, the average weekly earnings of a worker, the weekly loss of earnings resulting from a work-related injury, and any other matter pertaining to compensation.

PURPOSE

This policy aids in determining whether a worker is experiencing a recurrence of their work-related injury, and if they are, the benefits to which the worker is entitled. It also explains other situations where a worker might be eligible for further benefits, aiding the decision-maker. This includes situations such as a continuation of the original injury, a new injury, known or anticipated future treatment, the development of a subsequent disorder or condition, or the aggravation of a pre-existing condition.

DEFINITIONS

1. **End date of benefits:** The last day that the worker received either loss of earnings benefits or health care benefits or both.
2. **Intervening factor:** A new injury, incident, or exposure; or a new or pre-existing health condition that may be impacting the original work-related injury.

- 3. Recurrence of injury:** A situation where an injured worker experiences an unexpected return or worsening of symptoms associated with a work-related injury that meets the criteria set out in this policy.

PREVENTION

Preventing workplace injuries is the responsibility of everyone in the workplace. Where a worker has returned to work after a work-related injury, the prevention of further injury or recurrence of the original injury is of utmost importance.

When a recurrence of a previous work-related injury does occur, the focus is to prevent further injury or aggravation of the existing work-related injury, while also allowing and encouraging the worker to remain at work while recovering from the recurrence.

Workers and employers can minimize the impacts of a recurrence by:

- 1) When possible, keeping the injured worker in the workplace doing safe and productive work; or
- 2) Returning the worker to safe and productive work as soon as it is functionally appropriate for the worker to do so.

POLICY STATEMENT

In some cases, an injured worker who recovers from an injury and returns to work suffers a recurrence of the original work-related injury. When this happens, a decision-maker under the *Act* must determine that a recurrence has occurred and ensure the worker receives appropriate benefits.

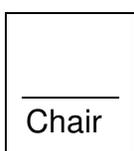
a) Criteria

All of the following criteria must be met in order for a decision-maker under the *Act* to determine that a worker has suffered a recurrence of the original work-related injury:

- i) at least 180 days have passed from the most recent end date of benefits related to the original work-related injury;
- ii) the original work-related injury stabilized or resolved, or the worker returned to work with or without accommodations;
- iii) there have been no significant intervening factors, such as a new incident or injury, either work-related or not work-related; and
- iv) there is objective medical evidence that establishes a connection between the original work-related injury and the recurrence.

b) Evidence

Decision-makers under the *Act* assess relevant information in order to make a determination of recurrence of injury. Information will be requested from the appropriate source, that being the worker, the primary treating medical practitioner, treating health



care practitioners, or the employer, in a form suitable to the YWCHSB. Information requested may include, but is not limited to:

- i) an explanation of what happened to cause the recurrence;
- ii) the worker's current symptoms and how they are related to the original work-related injury;
- iii) employment history since the original work-related injury;
- iv) any health care treatment related to the original work-related injury since the end date of benefits;
- v) an explanation of any significant intervening factors, such as a new incident or injury, or a new or pre-existing health problem that may be impacting the original work-related injury;
- vi) a summary of any new job modifications or accommodations required;
- vii) objective medical evidence of the worker's current functioning, based on a physical examination of the worker;
- viii) results of any diagnostic tests performed in the evaluation and diagnosis of the worker's condition, as well as a comparison to tests performed in the past; and
- ix) proof of the worker's current earnings, consistent with YWCHSB policy EL-01 "Loss of Earnings Benefits", or EA-04, "Optional Coverage for Sole Proprietors, Partners or Employers".

c) Benefits

In the case of a recurrence, a new adjudication decision is required to determine eligibility for benefits. Health care benefits are determined under Section 36 of the *Workers' Compensation Act*, and those YWCHSB policies that address health care treatment and benefits (see policies HC-01 through HC-08). Loss of earnings benefits are determined under Section 26 of the *Act*, and policies EL-01 and EL-04.

d) Employer's obligation to re-employ

Section 41 of the *Act* specifies conditions and timelines within which the employer is obligated to offer to re-employ the injured worker. If a worker experiences a recurrence of the original work-related injury, the re-employment timelines are not re-set to start at the date of the recurrence. The start date of the re-employment obligation remains the date of the original injury and the end date does not change due to the recurrence.

Where the employer at the time of the recurrence is the injury employer, there is an obligation to re-employ the worker in relation to the recurrence. Where the employer at the time of the recurrence is not the injury employer, there is no obligation on that employer to re-employ the worker in relation to the recurrence. (See policies RE-04, "Employer's Obligation to Re-Employ – Overview" and RE-07-1, "Compliance with the Re-Employment Obligation").

Situations other than recurrence of injury

When a worker is not experiencing a recurrence of injury, as determined by a decision-maker under the *Act*, the claim will be further investigated and eligibility for benefits determined according to the provisions outlined below.

1. Continuation of Injury

Continuation of injury is a situation where an injured worker requests benefits (loss of earnings benefits or health care benefits or both) within 180 days of the most recent end date of benefits.

Authorization of health care benefits in the case of a continuation of injury does not require a new adjudication decision if the proposed treatment is within the treatment guidelines set out in the Health Care Services policies (HC-01 through HC-08). If treatment exceeds the guidelines, the decision-maker will investigate and make a new decision.

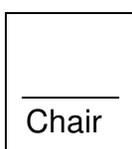
Authorization of loss of earnings benefits as a result of a continuation of injury follows the time lines in place for short-and-long-term benefits (see EL-01, “Loss of Earnings Benefits”). The loss of earnings benefit rate for a continuation is the same as on the date of the end of benefits, and the duration of the appropriate benefit period continues where it left off at the end of benefits.

Example: A construction worker falls and breaks his wrist. After the cast comes off he attends physiotherapy. He is discharged because he feels much better and work is getting really busy. Two months later his wrist is swollen and painful after his work day, so he starts going to physiotherapy again. This is a continuation of injury since it is within 180 days of the end date of benefits. New adjudication is not required in order to authorize benefits.

2. New Injury

It is possible to recover from a work-related injury, and then sustain another injury to the same part of the body. A new injury is an injury resulting from a new and separate incident, with no other intervening factors, and without a direct cause-and-effect relationship to the original work-related injury. A new injury as a result of a new and separate incident requires that the worker make a new claim for compensation. Decisions regarding work-relatedness will be determined under policy EN-01, “Arising Out Of and In The Course Of Employment”.

Example: The construction worker who broke his wrist has no further problems for two years. Then, he slips on the tailgate of his pick-up and falls down, fracturing the same wrist again. This is a new injury, and it requires a new claim with a new adjudication decision.



3. Known or Anticipated Future Treatment

In many cases, future health care treatment can be planned or anticipated based on the nature of the injury or accepted treatment protocols. Such treatment, with associated health care or loss of earnings benefits, does not require a new adjudication decision. It is important to document known or anticipated future treatment so the link can easily be made to the original work-related injury when the need for such treatment arises.

Example: The construction worker who broke the same wrist twice requires a surgical repair including pins. The surgeon needs to see the worker again in one year to determine whether the pins should be removed. This is known or anticipated future treatment, and does not require new adjudication in order to authorize the treatment.

4. Subsequent Disorders and Conditions

A subsequent disorder or condition may arise out of the primary, work-related injury. Such a disorder or condition is related to, but different from, the original injury. Subsequent disorders and conditions require new adjudication under policy EN-10, "Subsequent Disorders or Conditions Resulting from a Work-Related Injury".

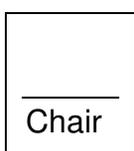
Example: The construction worker with the broken wrist develops post-traumatic arthritis in that wrist several years later. The decision-maker must investigate to determine whether the arthritis is a subsequent condition that arose as a result of the original work-related injury.

5. Aggravation of a Pre-Existing Condition

It is possible for a new injury, or an intervening incident or exposure, to cause an aggravation of a pre-existing condition. Aggravations require new adjudication under policy EN-07, "Pre-Existing Conditions".

Not all aggravations are compensable, even if the pre-existing condition is work-related. For example, aggravations caused by recreational activities are not generally compensable.

Example: The construction worker with the work-related post-traumatic arthritis in his wrist experiences a flare-up of symptoms after using a jackhammer at work. If his work-related pre-existing condition is aggravated, entitlement to benefits for the aggravation is determined under the provisions of policy EN-07. If he experiences an aggravation of his arthritis after playing in a hockey tournament, he may not be entitled to benefits for the aggravation.



ROLES AND RESPONSIBILITIES

YWCHSB

YWCHSB is responsible for case management. This includes decision-making, facilitating assessments, communicating with the Case Management Team, communicating expectations to the worker, and ensuring the worker is supported in the stay-at-work and return-to-work process.

The Employer

The employer is responsible for:

- maintaining communication with the worker and providing information on return to work opportunities;
- providing suitable and available employment to the worker, including accommodations if required; and
- providing information to YWCHSB as requested concerning the worker's return to work.

Failure to meet responsibilities may result in an employer being fined.

The Worker

The worker is responsible for:

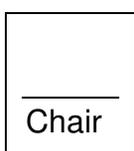
- seeking and co-operating fully in health care treatment recommended by YWCHSB and for attending any medical or other assessments required by YWCHSB;
- mitigating the loss caused by a recurrence of a work-related injury by taking all reasonable steps to reduce or eliminate any impairment and loss of earnings resulting from a recurrence of a work-related injury;
- co-operating with their early and safe return to work plans; and
- providing relevant information at any time during the claim cycle.

Failure to meet responsibilities may result in a worker's benefits being reduced, suspended or terminated.

Health Care Providers

In addition to diagnosing and treating the injured worker, health care providers are responsible for:

- providing information requested by YWCHSB to aid in determining recurrence of injury;
- communicating the worker's progress and functional abilities with the YWCHSB;
- identifying the most appropriate method of treatment for the injury;
- working within their scope of practice and according to standards of practice provided by the regulatory body; and
- ensuring the benefits of early and safe return to work are discussed, encouraged and supported throughout recovery.



APPLICATION

This policy applies to the Board of Directors, President/CEO, staff of YWCHSB and the Workers' Compensation Appeal Tribunal. It applies to all workers who are covered by the *Act*, regardless of date of injury.

EXCEPTIONAL CIRCUMSTANCES

In situations where the individual circumstances of a case are such that the provisions of this or any 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 policy EN-02, "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 YWCHSB under this policy can be appealed in writing to the YWCHSB Hearing Officer in accordance with section 53(1) of the *Act*, or any decision made under subsection 14(2) of the *Act* may be appealed directly to the Workers' Compensation Appeal Tribunal (WCAT). A notice of 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 comes into effect on July 1, 2012.

ACT REFERENCES

Sections 15, 26, 36, 41, 116

POLICY REFERENCES

EN-01, "Arising Out Of And In The Course Of Employment"
EN-02, "Merits & Justice of the Case"
EN-07, "Pre-Existing Conditions"
EN-10, "Subsequent Disorders or Conditions Resulting from a Work-Related Injury"
EN-12, "Permanent Impairment"
EL-01, "Loss of Earnings Benefits"
HC-01 – HC-08, "Health Care Services"
RE-04, "Employer's Obligation to Re-Employ – Overview"
RE-07-1, "Compliance with the Re-Employment Obligation"

HISTORY

New

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