



YUKON WORKERS'
COMPENSATION
HEALTH AND
SAFETY BOARD

SUBJECT: CLAIMS & BENEFITS POLICY NO.: CL - 18
BOARD APPROVAL: UNDER REVIEW
APPROVAL DATE: _____
BOARD ORDER NO.: _____
EFFECTIVE DATE: January 01, 1993

POLICY STATEMENT

*Revised
Dec, 31, 1999*

SECTION
REFERENCE:

POLICY:

CALCULATION OF LOSS OF EARNING CAPACITY

Calculation of the loss of earning capacity shall be based on the difference between the worker's average weekly earnings at the commencement of loss of earnings resulting from the injury, that amount not to exceed the maximum wage rate then in effect, and the wage the worker is estimated to be capable of earning at a suitable occupation after sustaining that injury.

The board is required to estimate what a worker is capable of earning at a suitable occupation following injury and to annually review the loss which may be involved. The difficult question to be determined is what the worker is capable of earning in a suitable employment following injury.

In the majority of cases where wage loss is shown following injury there will be a significantly important indicator in the actual wage the worker is receiving after a return to employment. This is not an absolute measurement as the worker may be underemployed or may be in a lower paying employment but have not returned. In these cases, after what may be Vocational Rehabilitation involvement if lengthy disability has been present, the board will have to estimate what the worker is capable of earning at a suitable occupation.

The board interprets "suitable occupation" as follows:

1. An occupation which the individual is physically capable of performing;
2. An occupation for which the individual is qualified;
3. An occupation for which the individual has a reasonable expectation to be hired (a reasonable expectation would exist if a specific job is not available because of strikes, unemployment, general economic conditions, etc., because other workers in that sector of the labour force face the same difficulties); and
4. An occupation which does not place unrealistic demands on the worker.

The latter may take into consideration a worker's age, geographical location, education and training, language skills, ethnic background, etc.

Calculation of Loss of Earning Capacity con't.

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The question of a suitable occupation must be worked out between the worker and the Occasional Rehabilitation Counsellor after medical determination of physical restrictions. A great deal of emphasis must be placed on the person in the field who knows the actual details of a worker's situation. Vocational Rehabilitation Counsellors, therefore, should have sufficient latitude to deal with more than just a short term assurance to workers as to income assistance. If the Counsellor, in his/her professional judgement, feels that a worker has done everything possible to achieve maximum earning capacity, that should weigh heavily on any decisions as to long term Board payments of wage loss assistance.

Although it is not necessary that an actual and tangible employment offer exists, such would certainly assist in determining present earning capacity. The onus will be on the Board to show they were reasonable in assigning an estimated earnings capacity.

This Policy applies to all accidents occurring after 1982.