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Factsheet #34
Updated: January 2013

UNDERSTANDING A PENSION DECISION For injuries prior to June 30, 2002

This Factsheet is for injuries or diseases that happened before June 30, 2002 and where the first indication of permanent disability also occurred before that date.

What is involved in a pension decision?

A pension decision has four main parts. They are:

- Entitlement to a permanent functional impairment award;
- Entitlement to a loss of earnings award;
- The Effective date, or the date on which your permanent disability award will begin; and
- The wage rate used to calculate the pension.

This Factsheet explains the first three parts. For more information about long-term wage rates, please read the Factsheet *Appealing Your Wage Rate*.

Sometimes the pension decision letter does not mention a loss of earnings award. If the decision only talks about a permanent functional impairment award and is silent on the loss of earnings issue, WorkSafeBC has likely decided you are not entitled to a loss of earnings.

The following explains the first three parts of a pension decision:

What is a Functional Impairment Award?

As a first step in a pension decision WorkSafeBC measures the loss of function resulting from the injury. This measurement is called the **Permanent Functional Impairment** or "PFI". Generally, a medical examiner assesses the loss of function. The measurements are entered into a computerized system that provides a percentage amount of total functional impairment. WorkSafeBC uses a schedule of awards called the

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Permanent Disability Evaluation Schedule. For example, the entire loss of the small finger would result in a PFI of 2.5 percent of total body function. The loss of all the toes is 5 percent of total body function.

A Disability Awards Officer (DAO) or a Claims Adjudicator Disability Awards (CADA) calculates the pension by applying the PFI percentage to the long-term wage rate set on your claim. WorkSafeBC will pay 75 percent of the long-term wage rate if the worker has a 100% disability up to a maximum amount that is regularly increased. For example, if your wage rate is \$4000 per month, WorkSafeBC will compensate for up to \$3000. If your PFI is 10 percent, the WorkSafeBC will calculate 10 percent of \$3000 to arrive at a monthly pension of \$300. You will receive \$300 per month plus cost-of-living increases over your lifetime.

Most pensions are awarded on the basis of loss of function. A loss of earnings award (“LOE”) can only be awarded if your disability prevents you from restoring your pre-injury earnings.

What if I disagree with a PFI award?

If you have questions about your PFI, you should discuss them with your doctor. You will need to take your decision letter and your PFI examination report to your doctor along with any information that you receive with your decision, such as a schedule of PFI percentages. You will need to ask your doctor if the PFI award includes every functional loss that has resulted from your injury. Your doctor can probably help you understand that part of the decision.

If you disagree with the PFI award you can request a review of the decision. In order to be successful you will need evidence from your doctor that shows that the medical findings from the examiner or the computerized results are incomplete or incorrect. For example, your doctor could find:

- a greater loss of motion;
- a different level of amputation;
- more weakness; or
- something WorkSafeBC missed altogether, such as a greater loss of feeling or sight or hearing.

What happens if I get worse while receiving a PFI pension?

The disability compensated by your pension award is considered to be permanent. However, WorkSafeBC will look at it again if your condition changes significantly. Your doctor must write to WorkSafeBC explaining that your condition has significantly and permanently worsened since your last pension examination. WorkSafeBC will then examine you again and make a new decision about any increased pension.

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What if I had a disability before the workplace injury or disease occurred?

If you had a previous injury or disease affecting the same area of the body that you injured or where you developed a disease through work, and which was already disabling to some extent immediately prior to your workplace injury, WorkSafeBC will assess how much of your PFI is due to the workplace injury or disease, and how much is due to the previous disability. Your pension is then based on the amount of the disability that relates to the workplace condition. This is called proportional entitlement.

How does WorkSafeBC decide to apply proportional entitlement to my pension?

When deciding whether to apply proportional entitlement to your pension, WorkSafeBC considers the following things:

- whether the injury or incident or disease at work would have caused the same amount of disability no matter what the previous disability was;
- whether the workplace injury or incident or disease was minor or moderate;
- if the pre-existing condition or disease caused you to take time off work or change jobs;
- if you previously sought medical or chiropractic attention or had treatment such as surgery or physiotherapy; and
- if there is medical evidence (such as x-rays or previous medical visits) of a pre-existing condition or disease.

For example, proportional entitlement **would likely be applied** in the following case:

A worker has had a back injury at work that the doctor diagnoses as a disc protrusion. However, there is evidence that the worker received previous treatment in the same area of the back, including surgery to remove part of the same disc. The worker had to take several months off work for the surgery and has seen a chiropractor on and off for years. The worker has lost a few days from work every year because of the previous back problems. The worker had some level of disability in the same area of his body as his workplace injury and that disability resulted in time loss from work even prior to the workplace injury

In the following example, proportional entitlement **would likely not be applied**:

A worker had arthroscopic knee surgery years before, but was able to continue working at the same job and was active in sports. The worker falls down a flight of stairs at work and severely damages the same

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knee. The worker must have reconstructive knee surgery. Proportionate entitlement would not be applied because the prior injury/surgery did not result in a disability prior to the workplace injury.

If the workplace injury is judged to be so severe that it would have produced the same level of injury, regardless of whether the pre-existing disability existed or not, then proportional entitlement should not be applied.

What is a loss of earnings (“LOE”) award?

WorkSafeBC must also consider the effect that your disability has on your ability to earn money. For example, you may have been awarded a PFI of 5 percent for a disability that does not affect your ability to do your pre-injury job, or you may have changed jobs so that you can still earn at least the same amount of money you made before the injury. On the other hand, depending on the kind of work you did before your injury, you may find that you are unable to return to your job or unable to work the same hours. If your disability also prevents you from any other work that pays as much as you earned before your injury or disease, you would be entitled to a LOE award.

When does WorkSafeBC consider giving LOE awards?

LOE awards are made only after every reasonable effort has been made to return you to suitable employment where you can make the same earnings as before your workplace injury. WorkSafeBC’s vocational rehabilitation services (“VRS”) may assist you to maximize your post-injury earnings up to your pre-injury wage rate. They may assist you to find another job, or to obtain the training and skills you need to work in another job. The Disability Awards Department will probably not make a decision about your entitlement to an LOE award until VRS reports back on its success or failure.

How does the WorkSafeBC calculate a LOE award?

WorkSafeBC uses the "Dual System" to decide your LOE. Firstly, it calculates the PFI award. Secondly, WorkSafeBC will compare your long-term wage rate earnings before the injury or from when you became disabled from disease to the earnings it expects you will be able to obtain in a suitable job over the long term (see page 6 for an explanation of suitable jobs). WorkSafeBC calculates the difference and takes 75 percent of that difference to arrive at your LOE. The Dual System compares the monthly PFI award with the monthly LOE award. If the LOE is greater than your PFI award, you will receive a LOE award.

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For example:

If your wage rate before the injury was \$4000 a month, and your earnings after the injury are \$3000 a month, the difference would be \$1,000 a month. WorkSafeBC calculates 75 percent of the difference, which would be \$750, to arrive at the loss of earnings. Your LOE pension would be \$750 per month.

If your PFI award was 10 percent, then your monthly PFI pension would be \$300. As the LOE award of \$750 per month is greater, you would get a LOE pension.

How long will I receive my LOE award?

If you were 50 years old or younger at the time you were injured, you will receive LOE payments plus cost-of-living increases for the rest of your life.

If you were between the ages of 51 and 64 when you were injured, you will receive the LOE award plus cost-of-living increases until the age of 65. Then the monthly amount will be reduced. It is adjusted based on the age at which you were injured and the amount of your PFI award. The new monthly LOE after 65 plus cost-of-living increases is then payable for the rest of your life.

What is a 'suitable job'?

For the purposes of LOE awards, a suitable job is one that WorkSafeBC thinks the worker can do and has a reasonable chance of getting. It will use the wages from the suitable job that will maximize your earnings, to calculate the loss of earnings.

How does WorkSafeBC decide what is a suitable job for me?

When your condition has stabilized, WorkSafeBC should help you find employment (see Factsheet "Vocational Rehabilitation"). To decide what kinds of jobs are suitable for you, WorkSafeBC sometimes needs to find out more about your physical limitations due to your disability. It may ask you to attend a **functional evaluation** (FEU). The FEU is in a work-like setting where you will be asked to do certain activities to see how much you can lift, how long you can stand, walk, bend, sit, or kneel, or do other work-related tasks.

After first trying to help you find work at your previous level of earnings in a job you can do, or deciding you need help or retraining to get another job (even if that new job pays a lower wage), the Vocational Rehabilitation Consultant will do an **employability assessment**. This assessment will decide more specifically what kind of job is suitable for you, taking into consideration the following things:

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- whether you are physically able to do the job;
- whether you have the background and skills to do the job;
- whether the job is reasonably available in the long run (including, if the job is not available right away;
- whether there is a good chance that you can get such a job in the coming months or years, depending upon your age); and;
- what earnings you would make in the job, based on the wage scale on the date of your injury.

In certain cases, WorkSafeBC may decide that a certain job is suitable for you, even if you do not take it. For example, you may choose one job over another because of personal preferences and not your work-related disability. If the job you choose pays less than another job that WorkSafeBC considers to be suitable (i.e. one that is considered within your physical ability and which is reasonably available), WorkSafeBC will use the higher paying job in calculating your loss of earnings. This will lower your LOE award.

In most cases, WorkSafeBC does not use entry level earnings to calculate your LOE award. Your post-injury earnings will be those earnings which WorkSafeBC expects you could obtain over the long term (usually considered to be 3-5 years). If WorkSafeBC believes that you will get wage increases until you reach an experienced level, or that you will get promoted to a higher paying job after a short while, it will likely use the higher earnings for calculating the LOE award.

What if my pension does not reflect my loss of earnings?

If you have a permanent disability as result of a work injury and you are earning less than you were before the injury, you can file a request for review of your pension decision, to get a LOE award or a higher LOE award. You will need to show why you are earning less. While things like age, employment skills, experience, language skills, and the economy are factors that make it difficult for a disabled worker to find employment, you need to show that your disability is a significant factor in your loss of earnings.

It may be that you disagree that the job or jobs that WorkSafeBC has used in calculating your LOE, is physically suitable or reasonably available. To argue that the job is unsuitable you will probably need your doctor's help to identify your medical restrictions and physical limitations. Your doctor will have to be specific about what physical activities (lifting, walking, climbing, or other job requirements) you cannot do. Because this evidence is likely to differ from the findings of the functional evaluation that WorkSafeBC has used, it will have to be strong evidence.

You may also give non-medical reasons for why the job is not reasonably available to you. For example, you may not have the skills or background to do the job, and WorkSafeBC may not have provided you with enough help to acquire those skills. It may be that there are a large number of qualified workers seeking the same kind

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of employment who will be hired in preference to you, because of your disability. If you feel that suitable jobs are not reasonably available in the long run, you will have to show that you made good efforts to find suitable employment or higher paying employment. According to WorkSafeBC policy a job does not have to be open to you right away, in order to be considered suitable. This means you have to show that WorkSafeBC is wrong when it says you have a good chance of getting a job in the long run; or you must show that you do not have the necessary skills, training, or background to do the work WorkSafeBC says you can do.

Important: You must do a full job search and keep good records of it. If possible, you should get letters from employers saying why you were not hired, especially if they feel you do not have the skills or physical abilities for the job.

This advice also applies if WorkSafeBC has used higher wages to calculate your LOE award than what you are actually earning when you start a new job. You must show that there is not as good a chance to get pay increases or get a promotion as WorkSafeBC has said.

If you are requesting a review because you have taken a job that pays you less than what you would earn at the suitable job chosen by WorkSafeBC, you must show that personal preference was not your reason and that this job was likely the best you could get.

The Pension Start Date

Usually in the same decision that sets out your PFI and your entitlement to a LOE pension, if any, WorkSafeBC will identify the date the disability stabilized or plateaued. This is actually a decision on the **effective date**, or start date, of the pension award: You are entitled to the pension the day after the condition stabilized. This is called. Usually, the start date is the day after temporary wage loss benefits have stopped.

You might disagree with the effective date on the basis that your condition stabilized earlier or later than the effective date chosen by the Board. Because the temporary wage loss benefit is usually greater than what you will receive as a permanent pension, it is usually to your benefit to have a later effective date for the pension. If you were receiving temporary wage loss benefits leading up to the pension decision, than having an earlier effective date would be to your benefit. You may wish to appeal the “effective date” if it is to your benefit to do so, and if you have medical evidence that your condition plateaued at some different date.

If you are receiving rehabilitation benefits, you may not actually receive a monthly pension until rehabilitation benefits have ended, regardless of the pension effective date. This is because the *Workers Compensation Act* does not allow WorkSafeBC to pay a total amount that is more than the monthly wage loss benefits. In other words, the worker cannot receive a pension award and full rehabilitation benefits at the same time.

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Methods of Payment

If your monthly pension is a small amount, WorkSafeBC will usually pay you a lump sum instead of a monthly payment. However, if you have a LOE award or your PFI award is greater than \$200 per month or the PFI greater than 10%, WorkSafeBC will pay you monthly.

If you receive a lump sum award, it will be smaller than the total you would get if you were paid the amount monthly. That is because lump sum payments are meant to be invested so that they collect interest. You get the amount of money that WorkSafeBC would invest to pay the award as a monthly payment, minus an amount for administrative costs. However, the lump sum amount includes an added adjustment for future the cost-of-living increases.

What if I disagree with the pension decision?

If you do not agree with the WorkSafeBC decision, you have the right to request a review. You must request a review within **90 days**. If you disagree with the Review Division decision you have **30 days** to file an appeal to the Workers' Compensation Appeal Tribunal.

Warning: When you appeal, the WCAT can deal with all four parts of the decision, even if you only disagree with one part. The WCAT or the Review Division may also take away from any decision, as well as add to it. This means that it is possible for them not only to deny your appeal but also to take away all or part of your pension.