

POLICY NUMBER: POL-71

Chapter:
CLAIMS

Subject:
CONDITIONS FOR ENTITLEMENT

Effective Date:
December 13, 2001

Last Updated On:
January 24, 2019

PURPOSE STATEMENT:

The purpose of this policy is to explain how the Workers Compensation Board determines whether a claim meets the conditions for entitlement to compensation benefits.

REFERENCE:

Workers Compensation Act R.S.P.E.I.1988, Cap. W-7.1, Sections 1(1)(z), (2), 6 (1), (3), (4), (4.5) 59 (1) and (4)

Workers Compensation Board Policy, POL-01, Psychological of Psychiatric Condition

Workers Compensation Board policy, POL-03, Travel and Related Expenses

Workers Compensation Board Policy, POL-09, Hearing Loss

Workers Compensation Board Policy, POL-61, Pre-existing Conditions

Workers Compensation Board Policy, POL-65, Occupational Disease

Workers Compensation Board Policy, POL-66, Respiratory Diseases

Workers Compensation Board Policy, POL-68, Weighing Of Evidence

Workers Compensation Board Policy, POL-69, Allergies

Workers Compensation Board Policy, POL-74, Worker

Workers Compensation Board Policy, POL-86, Wage Loss Benefits

Workers Compensation Board Policy, POL-90, Time Frame Limitations for Claims Filing and Invoicing

Workers Compensation Board Policy, POL-91, Repetitive Strain Injuries

Workers Compensation Board Policy, POL-92, Medical Aid

DEFINITION:

In this policy:

“Accident” means a chance event occasioned by a physical or natural cause that causes personal injury to a worker. This includes a wilful and intentional act that is not the act of the worker, any event arising out of and in the course of employment, or thing that is done and the doing of which arises out of and in the course of employment, and an occupational disease. Stress is included only when it is an acute reaction to a traumatic event arising out of and in the course of employment.

“Arising out of employment” means an injury that must be linked to, originate from, or be the result of, in whole or in part, an activity or action undertaken because of a worker’s employment.

“Fire inspector” means an inspector as defined in the *Fire Prevention Act* R.S.P.E.I. 1988, Cap. F-11.

“Firefighter” means a full-time, part-time, casual or volunteer member of a fire department or fire brigade.

“In the course of employment” means the injury must be linked to a worker’s employment in terms of time, place and activity.

“Medical aid” includes medical, surgical and dental aid, hospital and nursing services, chiropractic services provided by a registered chiropractor, occupational therapy and physiotherapy services provided by a licensed practitioner, x-ray and other treatment, drugs, dressings, appliances, apparatuses, transportation and other goods, services and things the Board may authorize in promoting the medical rehabilitation of an injured worker.

“Personal injury” means a diagnosed physiological or psychological injury or condition caused by an accident arising out of and in the course of employment.

“Pre-existing condition” means any condition inherent in the worker at the time of the accident.

“Wage loss benefits” means benefits paid as a result of a loss of earning capacity due to personal injury and are equivalent to an amount equal to 85% of the worker’s loss of earning capacity.

POLICY:

General Conditions

1. A worker is entitled to compensation where the worker has a personal injury caused by an accident that arose out of and in the course of employment.
2. A claim for compensation will be adjudicated if it meets the following criteria:
 - The person claiming compensation meets the definition of a worker, as set out in Workers Compensation Board policy, POL-74, Worker;
 - The claim is filed by the worker, or surviving spouse or dependant, within the required timeframe, as set out in Workers Compensation Board policy, POL-90, Time Frame Limitations for Claims Filing and Invoicing; and
 - The worker was employed in an industry or by an employer covered under the *Workers Compensation Act* of Prince Edward Island on the date of the accident.

Claims that do not meet all three criteria cannot be adjudicated for entitlement to compensation benefits.

3. If a claim meets all three criteria for adjudication, it will be examined to determine whether the required conditions for entitlement are met. To be entitled to compensation benefits, the Workers Compensation Board must be satisfied that
 - An accident occurred;
 - The accident caused personal injury to the worker; and
 - The injury was work-related, i.e., the injury arose out of and in the course of employment.

Each of the conditions for entitlement is explained further in this policy.

4. To determine whether the conditions for entitlement are met, the Workers Compensation Board assesses and weighs all relevant information and makes the decision based on the balance of probabilities, as set out in Workers Compensation Board policy, POL-68, Weighing of Evidence.
5. If more information is required to make a decision regarding the conditions for entitlement, the Workers Compensation Board will work with the worker, employer, health care providers and third parties, if applicable, to obtain the necessary

information.

6. If all three conditions for entitlement are met, the claim will be accepted and entitlement to wage loss benefits and medical aid will be determined as per Workers Compensation Board policies, POL-86, Wage Loss Benefits and POL-92, Medical Aid.
7. If the Workers Compensation Board determines that one or more of the conditions for entitlement has not been met, the claim cannot be accepted and further investigation into the other conditions of entitlement will not be required.

Accident

8. To be considered for entitlement to compensation benefits, the Workers Compensation Board must be satisfied that an accident, as defined by the *Workers Compensation Act*, has occurred.
9. An accident is a chance event occasioned by a physical or natural cause and causing an injury to a worker, including:
 - Wilful and intentional acts that are acts of someone other than the injured worker;
 - Exposure to causes or conditions, peculiar to a particular occupation or employment causing an occupational disease. Claims for occupational disease are adjudicated under Workers Compensation Board policy, POL-65, Occupational Disease;
 - Accidents in the usual sense, i.e., chance or unexpected events occurrences arising out of and in the course of employment or traumatic events that have caused an acute stress reaction. Accidents of this type are distinct and identifiable occurrences;
 - Occurrences that may not be distinct or easily identifiable, but are attributed to activities of work. Accidents of this type are referred to in the *Workers Compensation Act* as the thing that is done and the doing of which arises out of and in the course of employment. They include, but are not limited to
 - cumulative exposure to traumatic events
 - activities involving repeated use, force, or maintenance of sustained or dynamic awkward postures
 - routine bodily motions, where the motion has a direct connection to work and is significant enough to cause the injury

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- prolonged occupational exposure of excessive noise levels over a period of years.
10. For claims where the accident is not obvious, i.e., there is no distinct, identifiable act, exposure or event(s), the Workers Compensation Board will investigate further to determine whether an accident has occurred. All relevant information, including significant risk factors both in and outside of work, will be considered. There must be sufficient evidence of significant work risk factors to be considered an accident.
 11. The determination of the occurrence of an accident will be based on the balance of probabilities, as set out in Workers Compensation Board policy, POL-68, Weighing of Evidence.
 12. The date of the accident is the date on which the incident occurred, unless otherwise stated in Workers Compensation Board policy, POL-90, Time Frame Limitations for Claims Filing and Invoicing.

Personal Injury

13. To be considered for entitlement to compensation benefits, the Workers Compensation Board must be satisfied that an accident has caused personal injury to a worker.
14. Medical information is required to establish that an injury has occurred and that the injury was the result of an accident. The Workers Compensation Board considers a number of factors when making this determination, including:
 - Whether there is an established, medically recognized diagnosis;
 - Whether the medical information can reasonably relate the injury and symptoms to an accident;
 - The nature, extent and severity of the injury and its compatibility with the accident. The accident must be of sufficient degree and duration to result in the reported symptoms or injury;
 - The temporal relationship between the symptoms and the accident, such as whether there are immediate or near immediate symptoms caused by an acute injury or the delayed symptoms or condition caused by occurrences or exposures over time. An injury is not necessarily compensable simply because symptoms occurred at the workplace;

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- The worker's medical history, medical research and medical opinions;
 - Non-work related factors that may have contributed to the injury, condition or symptoms and whether they are the dominant cause of the injury, condition or symptoms;
 - Whether the worker has a medical condition that pre-dates the accident. Pre-existing conditions do not disqualify a worker from entitlement, but there must be an accident and resulting injury, as set out in Workers Compensation Board policy, POL-61, Pre-existing Conditions; and
 - The nature of the medical information establishing a connection between work and the injury, condition or symptoms, i.e., evidence-based and consistent with relevant medical literature and/or disability guidelines
15. A speculative connection is not sufficient evidence to establish that an accident caused an injury and a lack of evidence will be considered as a factor in making this determination.
16. The determination of whether an accident has caused personal injury to a worker will be based on the balance of probabilities, as set out in Workers Compensation Board policy, POL-68, Weighing of Evidence.

Specific Injuries and Illnesses

17. The Workers Compensation Board has a number of policies outlining the additional or unique criteria for entitlement for specific injuries or illnesses:
- Workers Compensation Board policy, POL-01, Psychological or Psychiatric Conditions
 - Workers Compensation Board policy, POL-09, Hearing Loss
 - Workers Compensation Board policy, POL-65, Occupational Disease
 - Workers Compensation Board policy, POL-66 Respiratory Diseases
 - Workers Compensation Board policy, POL-69, Allergies
 - Workers Compensation Board policy, POL-91, Repetitive Strain Injuries

Subsequent Injuries

18. Entitlement for any subsequent injury or condition is accepted when it is established that a causal link, as supported by objective medical information and accepted medical

research, exists between it and the work-related injury. Where a worker experiences a subsequent injury or condition as a direct result of an accepted work-related injury, then the subsequent injury or condition is compensable.

19. Subsequent injuries may also be compensable where they occur:
- in the course of approved treatment for an accepted work-related injury;
 - while the worker is participating in an approved return to work or vocational rehabilitation program for an accepted work-related injury; or
 - while the worker is in the course of travel paid for by the Workers Compensation Board, as set out in Workers Compensation Board policy, POL-03, Travel and Related Expenses.

Work-Relatedness

20. To be considered for entitlement to compensation benefits, the Workers Compensation Board must determine if the worker's injury was work-related, i.e., if the injury arose out of and occurred in the course of the worker's employment.
21. The injury must have happened at a time and place that is consistent with work, and while in the course of an activity whose purpose is related to work, to be considered work-related.
22. For claims where the relationship between the injury and work is difficult to determine, the Workers Compensation Board will investigate further. All relevant information, regarding the time, place and activities involved in the injury will be considered to determine whether work is the cause of the injury. A speculative connection is not sufficient evidence to establish that an injury is work-related.
23. The determination of work-relatedness will be based on the balance of probabilities that the injury arose out of and in the course of employment, as set out in Workers Compensation Board policy, POL-68, Weighing of Evidence.

Arising out of Employment

24. To arise out of a worker's employment, an injury must be causally connected to an activity undertaken because of a worker's employment. The Workers Compensation

Board will consider the nature, conditions, obligations, and explicit or implicit expectations of employment in making this determination.

25. The Workers Compensation Board considers a number of factors to determine if an injury is related to a work activity. These may include, but are not limited to, whether:
- There are identifiable work hazards or known risk factors in the workplace;
 - The activity was part of the worker's job demands and significant enough to cause the injury;
 - The activity was in response to employment expectations, i.e., formal job duties and tasks directly related to the worker's job;
 - The activity was required or related to the employment, but not part of the formal tasks or assigned work;
 - The activity was undertaken taken at the direction or authorization of the employer;
 - The activity occurred during a time period for which the worker was being paid;
 - There are personal risks and conditions specific to the worker and present regardless of employment that may have contributed or caused the injury. For example, a degenerative, ordinary disease of life or other pre-existing condition is a risk for the worker both in and out of employment.

These factors do not exclusively determine if an injury is related to a work activity. The Workers Compensation Board assesses and weighs relevant factors to determine whether the relationship to work is more probable than not.

26. For injuries that occur during employer-sanctioned wellness or social events, the Workers Compensation Board may consider the injury work related where:
- The employer directed the worker to participate in the activity, or the activity is a requirement of the worker's employment; and
 - The activity was being performed at a location designated or approved by the employer.
27. Activities during lunch hours, coffee breaks, or other similar rest periods may be considered to be work-related activities, only if the worker is making reasonable and

proper use of the employer's facility and employment factors have contributed to the injury.

In the Course of Employment

28. To be considered in the course of employment, the injury must be linked to a worker's employment in terms of time, place and activity. This means that the Workers Compensation Board must determine the activity causing the injury occurred:
- At a time that is consistent with when the worker typically works or at a time when the worker is undertaking an activity because of their employment; and
 - At a place that is consistent with the place of employment or the employer's premises.
29. Time and place are not strictly limited to the typical hours of work or the employer's premises.
30. An injury is not necessarily work-related when symptoms occurred at a time that is consistent with when the worker typically works. To be considered arising out of and in the course of employment, there must be a relationship between the work activities and the injury.
31. The employer's premises includes:
- Any employer owned or leased building or property, such as parking lots, grounds and private roads, and
 - Any shared premises or any worksite where the employer is conducting business.
32. Workers are not considered to be in the course of employment if they choose to leave the employer's premises to eat or perform other personal errands, even if this occurs during typical work hours, unless the departure was directed or requested by the employer.

Travel

33. Where travel is part of a worker's job function, and where a worker is being paid for traveling, a personal injury resulting from travel is considered to have occurred in the course of employment.
34. Workers are not considered to be in the course of employment during the regular commute to work, i.e., while traveling to or from the worker's primary workplace.
35. Only travel by the most direct route qualifies for being in the course of employment. Any detour from the most direct route or for personal activities removes the worker from the course of employment.
36. Workers required to travel away from home are considered to be in the course of employment while making reasonable and proper use of the accommodation facilities. However, workers are not considered to be in the course of employment when participating in personal or leisure activities where the employer has not directed or requested it, even if they are on the accommodation premises.

Personal Activities

37. Workers are not considered to be in the course of the employment when engaged in personal errands and personal activities that have no relationship to the activities undertaken because of the worker's employment.
38. To determine whether a personal activity occurred in the course of employment, the Workers Compensation Board will consider:
 - The duration of the activity;
 - Nature of the activity; and
 - The extent to which the activity deviated from the worker's regular employment.
39. Injuries that occur as a result of voluntary personal relationships will not usually be considered in the course of employment, even if the parties conduct their relationship during or at work. Claims cannot be accepted if the cause is exclusively personal and has no relationship to the activities undertaken because of the worker's employment.
40. Where the worker engages in personal activities that substantially deviate from the expectations of employment, they may not be considered to be in the course of

employment. Examples include:

- Acts considered to be criminal in nature;
- Injuries while the worker is intoxicated or drug impaired;
- Aggressive acts, where the worker is an instigator or the issue is purely personal with no relationship to the activities undertaken because of the worker's employment

Workers Called Out for Emergencies in the Course of Employment

41. Workers are not considered to be in the course of employment while routinely travelling to and from work. However, as part of their contract of employment, the worker might be called out at a time which is outside their normal working hours to deal with an emergency situation connected with their employment.

A worker is considered to be in the course of employment when the worker first becomes aware of the emergency and is required to travel to the employer's workplace or to some other place where the job has to be done. The worker continues to be in the course of employment until the worker returns home, to the place where the call was received, or any place for refreshment or recreation, whichever is reached first.

Presumption of Work-relatedness

42. The Workers Compensation Board determines work-relatedness for most claims on the balance of probabilities, as set out in Workers Compensation Board policy, POL-68, Weighing of Evidence. There are specific circumstances, however, where the relationship between the injury and work is presumed.

General Presumption

43. If, after assessing and weighing all relevant factors, the Workers Compensation Board is unable, on the balance of probabilities, to make a decision whether an injury is work-related, the claim will be reviewed to determine if the general presumption of work-relatedness may apply.
44. The general presumption does not mean that all injuries are presumed to be work-related. The presumption applies only in the following types of cases where it is not

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possible to obtain sufficient information to determine whether an injury either arose out of or occurred in the course of employment:

- Where the accident and resulting injury arose out of the employment, it is presumed that the injury occurred in the course of the employment.
- Where the accident and resulting injury occurred in the course of employment, it is presumed that the injury arose out of the employment.

Where there is evidence to the contrary, the presumption does not apply.

45. For claims where the general presumption applies, the Workers Compensation Board must be satisfied that an accident occurred and the accident caused personal injury to the worker as conditions for entitlement.

Presumption for Trauma- and Stressor-Related Disorders

46. Workers Compensation Board Policy, POL-01, Psychological or Psychiatric Condition, sets out the presumption of work-relatedness for trauma- and stressor-related disorders, such as Post-traumatic Stress Disorder.

Presumptions for Firefighters – Occupational Disease

47. Workers Compensation Board Policy, POL-65, Occupational Disease, sets out the presumption of work-relatedness for firefighters and fire inspectors with specific occupational diseases.

Presumptions for Firefighters – Heart Injury

48. Effective January 1, 2019, where a firefighter or fire inspector experiences a heart injury (heart attack, cardiac arrest or heart arrhythmia) within 24 hours of responding to an emergency call or dispatch, the heart injury will be presumed to be work-related. Where there is evidence to the contrary, the presumption does not apply.

Wilful and Serious Misconduct

49. Wilful and serious misconduct is the deliberate and unreasonable breach of rule or law designed for safety, well known to the worker, and enforced. It is the voluntary act of a

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worker with reckless disregard for the worker's own safety and which the worker should have recognized as being likely to result in personal injury.

50. Where the injury is solely due to wilful and serious misconduct of the worker, compensation for the injury, including medical aid, is not payable for the first three weeks following the loss of earning capacity.

HISTORY:

January 24, 2019 – Previously titled *Arising Out of and in the Course of Employment*, the policy was amended to clarify the criteria and conditions for entitlement to compensation. Amendments include clarification related to of arising out of and in the course of employment and explanation on how the Workers Compensation Board determines whether there has been an accident and personal injury. Content from the policy, Emergency Callout of Workers (POL-127), has been incorporated into the amendments and that policy has been rescinded.

September 12, 2016 - Non-substantive changes to reference Workers Compensation Board policy, POL-90, "Time Frame Limitations for Claims Filing and Invoicing."

November 26, 2009 - The content in Workers Compensation Board policy, POL04-06, "Personal Injury" was combined with this policy to improve clarity around the issue of personal injury and arising out of and in the course of employment. The policy on "Personal Injury" was rescinded.

June 26, 2007 - The policy was updated as a result of the 60 month policy review process.

Board of Directors Approval Date: December 13, 2001