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|  Yukon Workers' Compensation Health and Safety Board | Part: | Entitlement | | |
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[PRE-EXISTING CONDITIONS](#)

GENERAL INFORMATION

A worker with a work-related injury may also have an illness, disease, prior injury or other physical or psychological condition that existed before the work-related injury occurred. Such conditions are considered “pre-existing”. The work-related injury may make the pre-existing condition worse than it was before the work-related injury. If it does, the Yukon Workers’ Compensation Health and Safety Board (YWCHSB) decision-maker must decide the worker’s entitlement to compensation in relation to both the work-related injury and any worsening of the pre-existing condition.

PURPOSE

This policy provides direction to decision-makers under the *Workers’ Compensation Act*, S.Y. 2008 (*“the Act”*) concerning claims that may involve pre-existing conditions.

DEFINITIONS

1. **Pre-existing condition:** any physical or psychological illness, disease or condition that existed before the work-related injury occurred, that may or may not have been known to the worker.

2. **Injury:** The *Act* defines "injury" as:
 - a) an injury as a result of an event, or series of events, occasioned by a physical or natural cause;
 - b) an injury as a result of a wilful and intentional act, not being the act of the worker;
 - c) a disablement, but does not include the disablement of mental stress or disablement caused by mental stress, other than post-traumatic stress;
 - d) an occupational disease, which includes a disease from causes and conditions peculiar to or characteristic of a particular trade or occupation or peculiar to the particular employment; but does not include an ordinary disease of life; or
 - e) death as a result of an injury.

3. **Work-related injury:** an injury that arises out of and in the course of the employment of a worker. ¹
4. **Exacerbation:** temporary worsening of a pre-existing condition due to a work-related injury. ²
5. **Aggravation:** permanent worsening of a pre-existing condition due to a work-related injury. ²
6. **Causative significance:** the employment duties or nature of employment contribute to a significant degree in causing the injury, or worsening a pre-existing condition to the point of injury, such that the injury would not have occurred but for the employment.
7. **Maximum medical improvement:** the point at which the worker has recovered to the best possible condition, has stabilized at that condition and is unlikely to significantly improve.

PREVENTION

Under Section 14 of the *Act*, every worker is responsible for taking all reasonable steps to reduce or eliminate any impairment by seeking and co-operating in health care or treatment recommended by YWCHSB, and participating in any medical or other evaluations required by YWCHSB. This includes mitigating the effects of any pre-existing condition that could negatively affect recovery and return to work after a work-related injury. Controlling diabetes, maintaining strength and flexibility if arthritic, and seeking appropriate treatment for psychological illness are examples of mitigating the effects of pre-existing conditions that could negatively impact severity of a work-related injury or duration of recovery.

Prevention includes heeding health care providers' advice regarding functional abilities. Participating in activities that exceed one's functional abilities could be considered an injurious practice and could affect a worker's entitlement to benefits.

Preventing workplace injuries is the responsibility of everyone in the workplace. YWCHSB encourages employers, workers, health care providers and other parties to work together to prevent work-related injuries. When an injury occurs, workers, employers and YWCHSB must co-operate to return the worker to safe, suitable and available work as soon as functionally possible. This helps prevent disability, ultimately leading to lower assessment rates.

¹ See YWCHSB policy EN-01, "Arising Out Of and In The Course Of Employment" for full criteria.

² American Medical Association Guides to Injury Causation, 2nd Edition

YWCHSB also administers the *Occupational Health and Safety Act and Regulations*. All workplace parties are required by law to know and understand how this legislation applies to their work.

POLICY STATEMENT

A work-related injury may cause a pre-existing condition to get worse. In such cases, a worker may be entitled to compensation in relation to the worsening of the pre-existing condition. This worsening may be either temporary (exacerbated) or permanent (aggravated).

1. Claim Adjudication

Whether or not a pre-existing condition exists, all claims for compensation are adjudicated in accordance with YWCHSB policy EN-01, “Arising Out of and In the Course of Employment”.

a) A pre-existing condition causes an injury

A pre-existing condition may cause an injury to occur. In such cases, the decision-maker will decide if the injury is work-related based on whether the worker’s job duties, nature, or conditions of employment had causative significance – the injury would not have occurred but for the employment.

b) The nature or conditions of employment cause an injury

If a sudden or distinct incident occurs in the workplace, and an injury results, it is usually simple to conclude the incident caused the injury.

A worsening of a pre-existing condition may constitute an injury whether or not a specific incident occurred, and whether or not the worker sustained a separate and distinct work-related injury. It is not a bar to compensation if a worsening of a pre-existing condition, to the point of injury, results from the worker performing job duties over a period of time rather than from a specific incident. To be compensable as an injury, however, the evidence must warrant a conclusion that there was something in the nature or conditions of the employment that had causative significance in causing the injury.

c) Work-related pre-existing conditions

If a worker had an accepted claim for an injury or disease in the past, it may be considered a work-related pre-existing condition and may be compensable.

If a new work-related injury makes a compensable pre-existing condition worse, the worker may be entitled to compensation for the new work-related injury and the worsening of the work-related pre-existing condition. If the work-related pre-existing condition recurs or worsens for other reasons, such as recreational

activities, the decision-maker will determine the worker's entitlement to compensation according to this and other appropriate YWCHSB policies.³

d) Non-work-related pre-existing conditions

Pre-existing conditions that did not arise out of and in the course of a worker's employment are not compensable. However, if a work-related injury makes a non-compensable pre-existing condition worse, the worker is entitled to compensation for the work-related injury and the worsening of the pre-existing condition.

2. Managing Claims with Pre-Existing Conditions

When a work-related injury makes a pre-existing condition worse, benefits continue until there is evidence the work-related injury is no longer contributing, in whole or in part, to the worker's loss of function or earning capacity.

YWCHSB may authorize treatment for the pre-existing condition, if it is worse because of the work-related injury, and treating it will speed healing time or prevent further injury. In such cases, YWCHSB is not responsible to treat the pre-existing condition into the future.

a) The pre-existing condition is not worsened, but it prolongs healing time

In some cases, a work-related injury does not make a pre-existing condition worse. However, the nature of the pre-existing condition might make treatment and rehabilitation take longer than expected. In these cases, loss of earnings benefits and medical treatment continue until the worker recovers from the work-related injury.

b) Exacerbation: temporary worsening of a pre-existing condition

A work-related injury may worsen a pre-existing condition temporarily. YWCHSB is responsible to compensate the worker until he or she has recovered from the work-related injury, and returned to the same level of function and earning capacity as before the work-related injury occurred – a signal the pre-existing condition has returned to the pre-injury state.

The decision-maker will evaluate evidence of the worker's level of function and earning capacity before the work-related injury based on factors such as, but not limited to:

- whether the pre-existing condition required treatment;
- the nature of any symptoms and whether they had any effect on the worker's functioning;
- whether the worker required workplace accommodations; and
- whether the condition caused any measurable impairment.

³ EN-10, "Subsequent Disorders and Conditions" and EN-16, "Recurrence of Injury" for example.

c) Aggravation: Permanent worsening of a pre-existing condition

A work-related injury may make a pre-existing condition worse permanently. The worker may never return to the same level of function and earning capacity as before the work-related injury. When the worker has reached maximum medical improvement, he or she may be entitled to a partial permanent impairment award.⁴

YWCHSB is responsible to return the worker as closely as possible to the level of function as before the work-related injury. If the permanent worsening of a pre-existing condition results in a loss of earning capacity, YWCHSB is responsible to compensate the worker for that loss.

d) Degenerative or deteriorating pre-existing conditions

Some pre-existing conditions are degenerative, and expected to deteriorate over time. A worker's pre-existing condition may have been stable and without symptoms before the work-related injury, or it may have already been causing the worker some impairment or disability. Either way, a degenerative pre-existing condition may deteriorate naturally during rehabilitation for a work-related injury.

If this happens, the decision-maker will seek evidence of how the worker's condition would have likely progressed if the work-related injury had never happened. This may include a specialist's opinion, an opinion or resources considered reliable by YWCHSB's medical consultant, a medical-legal opinion, or any other evidence YWCHSB considers reliable. YWCHSB will continue to assist the worker until he or she returns to the level of function and earning capacity that would be expected had the work-related injury never occurred.

The worker may be entitled to a partial permanent impairment award for the work-related injury, less any impairment that existed before the work-related injury.⁵

ROLES AND RESPONSIBILITIES

YWCHSB

YWCHSB is responsible for case management. This includes decision-making, including identifying any potential benefits a worker may be entitled to as a result of a worsening of a pre-existing condition. They also facilitate assessments, communicate with the case management team, communicate expectations to the worker, and ensure the worker is supported in the early and safe return-to-work process.

⁴ See YWCHSB policy EN-12, "Permanent Impairment"

⁵ See YWCHSB policy EN-12, "Permanent Impairment"

Employers

Employers are responsible for:

- taking appropriate measures to ensure their workplace, machinery, equipment and processes under the employer's control are safe;
- ensuring workers are aware of workplace hazards;
- taking appropriate measures to reduce the risk of workplace injury and illness; and
- maintaining communication with the worker and providing suitable and available employment to the worker, including accommodations if required.

Failure to meet responsibilities may result in being subject to penalties under the *Workers' Compensation Act* or *Occupational Health and Safety Act*.

Workers

Workers are responsible for:

- seeking and cooperating 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 work-related injury and worsening of a pre-existing condition by taking all reasonable steps to reduce or eliminate any impairment and loss of earnings resulting from a worsening of a pre-existing condition;
- cooperating with their early and safe return-to-work plans; and
- providing relevant information at any time during their case management.

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 worker, health care providers are responsible for:

- providing information requested by YWCHSB to aid in determining worsening of a pre-existing condition resulting from a work-related injury;
- communicating the worker's progress and functional abilities to YWCHSB;
- identifying the most appropriate method of treatment for the work-related injury and any worsening of a pre-existing condition resulting from a work-related 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, including the President/CEO, staff of the YWCHSB, the Workers' Compensation Appeal Tribunal, employers and workers covered by the *Act*.

EXCEPTIONAL CIRCUMSTANCES

When the circumstances of a case are such that this policy cannot be applied or doing so would bring an unfair or unintended result, YWCHSB will decide the case based on its individual merits and justice, in keeping with YWCHSB policy EN-02, "Merits and Justice of the Case". Such a decision will be for that case only and will not be precedent setting.

APPEALS

Decisions made by YWCHSB under this policy can be appealed directly in writing to the hearing officer of YWCHSB in accordance with subsection 53(1) of the *Act*. Notice of the appeal must be filed within 24 months of the date of the decision by YWCHSB, in accordance with section 52 of the *Act*.

ACT REFERENCES

Sections 14, 36, 52, 53, 56 and 117(1)

POLICY REFERENCES

EN-01, "Arising Out of and In the Course of Employment"

EN-02, "Merits and Justice of the Case"

EN-10: "Subsequent Disorders and Conditions"

EN-12, "Permanent Impairment"

EN-16: "Recurrence of Injury"

HISTORY

EN-07, "Pre-Existing Conditions", effective July 1, 2008, revoked July 1, 2015

CL-47, "Pre-Existing Conditions," effective January 1, 2008, revoked July 1, 2008

Policy # 51, "Pre-Existing Conditions – Aggravation"

Policy #39, "Reserve for Enhanced Disabilities"