

Administrative Practice Document

Relating to Policy 15-02-03 Pre-existing Conditions

Note: This is not a policy; it is a supplementary document to illustrate how the WSIB will administer the *Workplace Safety and Insurance Act, 1997, (WSIA)* and [Policy 15-02-03 Pre-existing Conditions](#) in practice. If there is a conflict between this Administrative Practice Document and the WSIA and/or WSIB policy, the decision maker will rely on the WSIA and/or WSIB policy, as the case may be.



December, 2014

Pre-existing Conditions

INTRODUCTION

Section 13 of the *Workplace Safety and Insurance Act, 1997* (WSIA), directs that workers who are injured by accident arising out of and in the course of their employment or who acquire an occupational disease that occurs due to the nature of their employment are entitled to compensation. The Workplace Safety and Insurance Board (WSIB) provides benefits to workers with an impairment resulting from a work-related injury or disease.

The pre-requisite of work-relatedness outlined in section 13 of the WSIA applies at every stage in the life of a claim – initial entitlement, ongoing entitlement and determining permanent impairment. The impairment must be attributable, or causally linked, to the work-related injury/disease in order for entitlement to benefits to continue. Decision-makers continually assess and monitor the clinical evidence to confirm ongoing impairment resulting from the work-related injury or disease.

The policy on pre-existing conditions provides guidance on determining work-relatedness of the ongoing impairment where there is evidence of a pre-existing condition and both the work-related injury/disease and pre-existing condition are contributing to the ongoing impairment. The policy outlines “significant contributing factor” as the standard of causation for review in determining work-relatedness of the ongoing impairment. It also includes the criteria for determining when the contribution of the work-related injury is no longer sufficiently significant to support continuing entitlement to benefits.

This document focuses on the application of the policy on Pre-existing Conditions. It includes references to the application of the policies on Aggravation Basis and Permanent Impairments, noting they also relate to the issue of work-relatedness of the impairment.

KEY PRINCIPLES

- The WSIA directs that compensation be provided for work-related injuries and occupational diseases.
- Entitlement for a work-related injury/disease will not be denied due to the existence of a pre-existing condition.
- Work-relatedness is established when determining initial entitlement. Decision-makers continue to evaluate the work-relatedness of a worker’s ongoing impairment throughout the life of a claim.
- When a work-related injury/disease and a pre-existing condition are factors in the worker’s ongoing impairment, WSIB determines ongoing entitlement based on the causation standard of “significant contributing factor”.
- The “thin skull” and “crumbling skull” doctrines are well-established legal principles that are components of decision making at the WSIB.
- The WSIB makes its decisions based on the merits and justice of each case.
- When the evidence for and against an issue relating to a worker’s claim are evenly balanced, the benefit of doubt is given to the worker.

Pre-existing Conditions

Initial Entitlement

WSIB decision makers determine entitlement according to the WSIA and policies [15-02-01, Definition of an Accident](#), and [11-01-01, Adjudicative Process](#). Additional policies that are relevant and applicable to the facts of the case may also be considered. All decisions are made on the merits and justice of the claim based on the case-specific facts, in accordance with policy and law. Where the evidence for and against the issue in a claim is approximately equal in weight, the worker is given the benefit of doubt and the claim is allowed. (See Policy [11-01-03, Merits and Justice](#) and Policy [11-01-13, Benefit of Doubt](#).)

When the decision-maker establishes the worker was injured by accident arising out of and in the course of the employment, or has an occupational disease that occurred due to the nature of the employment, the claim is allowed. This is the case even when there is evidence of a pre-existing condition which may have increased the worker's susceptibility to injury/disease. Workers are compensated for the full effect of the work-related injury/disease even when the effects are worse than expected, or when recovery takes longer due to a pre-existing condition.

The mere existence of a pre-existing condition is not grounds to disqualify a worker from entitlement to WSIB benefits. Policy [15-02-03, Pre-existing Conditions](#), reinforces this long-standing practice.

For the remainder of this document, the term 'injury' includes an occupational disease.

DEFINITIONS

Impairment

Impairment is a physical or functional abnormality or loss (including disfigurement) which results from an injury and any psychological damage arising from the abnormality or loss.

Pre-existing condition

A pre-existing condition is any condition that existed prior to a work-related injury, and may include injuries, diseases, degenerative conditions, and psychiatric conditions. The existence of the condition must be confirmed by pre-injury or post-injury clinical evidence and may have been evident prior to the occurrence of the work-related injury or it may become evident afterwards.

Pre-existing conditions include but are not limited to

- conditions that have produced periods of impairment/disease requiring health care and have caused a disruption in employment prior to the workplace/injury or disease, as defined in [15-02-04, Aggravation Basis](#)
- underlying or asymptomatic conditions which only become manifest post-accident as defined in [14-05-03, Second Injury and Enhancement Fund \(SIEF\)](#), and
- work-related permanent impairments for which the WSIB has granted a permanent disability (PD) or non-economic loss (NEL) benefit.

Pre-existing Conditions

What is an Impairment?

As noted above, impairment is defined as a physical or functional abnormality or loss (including disfigurement) which results from an injury and any psychological damage arising from the abnormality or loss. The existence of impairment is established through the clinical findings found in the medical records. A clinical finding is a sign that can be seen, heard, felt, or measured by a health care professional. Clinical findings of impairment include, but are not limited to

- measurable clinical findings of physical loss or abnormality,
- measurable clinical findings of functional loss or abnormality,
- evidence of complication in healing,
- abnormal neurological findings,
- abnormal range of motion (ROM),
- abnormal radiological findings.

In the absence of clinical findings of impairment, factors such as pain complaints and the duration or perceived severity of the treatment received are not considered to be indicators of impairment. For example, surgery is a therapeutic intervention designed to improve or fully restore function. Surgery, in and of itself, is not an indicator of impairment. The post-operative outcome and associated clinical findings may indicate ongoing impairment.

When a worker has a pre-existing condition, the clinical evidence of impairment following the work-related accident may be due to the work-related injury, the pre-existing condition, or a combination of the two. Where the pre-existing condition is non-work-related, the work-relatedness of the ongoing impairment must be determined to ensure WSIB benefits are provided for work-related injuries as directed by the WSIA. Where the pre-existing condition is a work-related condition, decision-makers must determine if the ongoing impairment is due to the current injury or the previous injury.

Monitoring and Assessing Ongoing Impairment

After initial entitlement for a work-related injury is established, decision-makers continually monitor the worker's recovery, take appropriate action to promote recovery and facilitate return to work, and continue benefits and services as applicable. When a pre-existing condition is evident, or becomes evident, decision-makers will have regard for Policy [15-02-03, Pre-existing Conditions](#), while monitoring the work-relatedness of the ongoing impairment and evaluating whether the pre-existing condition is impacting the worker's ongoing impairment.

In order to determine if the pre-existing condition is impacting the worker's ongoing impairment, decision-makers must obtain sufficient relevant information to understand the nature of the pre-existing condition.

Decision-makers may

- contact the worker to obtain information about when and how the condition started, details about symptoms and treatment received for the condition, and any work impacts,
- contact the employer to confirm any complaints, lost time from work and/or work accommodations as a result of the pre-existing condition, and

Pre-existing Conditions

- obtain relevant clinical records from the family physician and other health care providers to confirm the nature of the pre-existing condition and resulting impairment.

The decision-maker requests the relevant clinical records relating to the pre-existing condition based on the information obtained from the worker, employer and from the clinical records on file. Generally, decision-makers use two to five years prior to the accident as a guide but, may request additional records if required.

Once the information is gathered and the relevant clinical records are received, the decision-maker must consider the nature of the work-related injury, the ongoing impairment, and the pre-existing condition by considering the

- mechanics of the workplace accident,
- diagnosis and associated clinical findings of the work-related injury,
- diagnosis and associated clinical findings of the pre-existing condition,
- impairment resulting from the pre-existing condition prior to the workplace accident,
- worker's pre-accident functional abilities and pre-accident job duties

A full understanding of both the work-related injury and the pre-existing condition is necessary to determine the extent and severity of both the work-related injury and the pre-existing condition. This enables decision-makers to evaluate and determine the impact, if any, of the pre-existing condition on the ongoing impairment and/or whether the work-related injury has aggravated the pre-existing condition.

Once the existence of a pre-existing condition is established, the decision-maker must continually assess and monitor the evidence in the claim to determine whether the pre-existing condition is, or becomes, a contributing factor in the worker's ongoing impairment. As stated in Policy [15-02-03, Pre-existing Conditions](#), the decision-maker determines whether the pre-existing condition is impacting the worker's ongoing impairment by considering whether

- the impairment affects the same body part or system as the pre-existing condition,
- the impairment continues beyond the expected recovery period, given the work-related injury,
- the impairment is unexpectedly severe given the work-related accident,
- there is a change in the worker's ability to perform

Allowance on an Aggravation Basis

At any point where assessment of the clinical records indicates there was pre-accident impairment due to the pre-existing condition, as defined in Policy [15-02-04, Aggravation Basis](#), the decision-maker will review the initial entitlement decision.

When the severity of the work-related accident is considered minor and the pre-existing condition required health care and caused disruption in employment prior to the accident, the initial entitlement decision will be revised to allowance on an aggravation basis, according to Policy 15-02-04. Allowance on an aggravation basis accepts entitlement for the acute episode only, until the worker returns to the pre-accident state. The pre-accident state is the worker's level of impairment and work capacity prior to the work-related injury.

Entitlement for a recurrence and/or permanent impairment is generally not considered in a claim where entitlement was allowed on an aggravation basis.

Pre-existing Conditions

the pre-accident work beyond what is expected, given the work-related injury.

The presence of a pre-existing condition does not necessarily mean it is impacting the worker's ongoing impairment following the work-related injury.

In keeping with the "thin skull" and "crumbling skull" principles, the decision-maker must first consider the nature of the work-related injury and the resulting impairment relative to the pre-existing condition in order to determine if there comes a time when the impairment is no longer work-related. As benefits are provided for the full effect of the work-related injury, the initial consideration is whether there is ongoing impairment resulting from the work-related injury. Despite the existence of a pre-existing condition and any associated impairment, benefits will end when the

- work-related injury recovers fully as expected,
- work-related injury recovers fully, even if the recovery takes longer due to the pre-existing condition, or
- aggravation of the pre-existing condition resolves.

When the clinical evidence indicates ongoing impairment due to both the work-related injury and the pre-existing condition, the clinical evidence is continually monitored to assess the significance of the contribution of the work-related injury relative to the significance of the contribution of the pre-existing condition. Benefits continue as long as the work-related injury is considered to be a significant contributing factor to the ongoing impairment.

In order to determine whether the work-related injury continues to be a significant contributing factor to the ongoing impairment, the decision-maker considers whether the work-related injury on its own would cause a similar level of impairment and whether the worker's current level of impairment would continue even if the work-related injury had not occurred.

Decision-makers will have regard for all the information and clinical evidence in the claim and consider factors, such as

- symptomology and clinical findings that are attributable to the work-related injury versus those attributable to the pre-existing condition,

Legal Principles

The distinction between "*thin skull*" and "*crumbling skull*" as described in *Athey v. Leonati* [1996] 3 S.C.R. 458 at para. 34 has been paraphrased here in the context of the WSIB and work-related injury:

Based on the "*thin skull*" principle, the WSIB takes the worker as it finds him/her. Entitlement is not denied because a worker has a pre-existing condition that makes him/her more susceptible to injury. The WSIB compensates the worker for the full effect of the work-related injury even if the injury is more severe than expected or takes longer to recover due to the pre-existing condition.

Based on the "*crumbling skull*" principle, the WSIB recognizes that while a work-related injury exists, the pre-existing condition and its effects were inherent in the worker at the time the work-related injury occurred.

The WSIB compensates the worker for the effects of the work-related injury but not the effects of the pre-existing condition, which the worker would have experienced anyway.

Pre-existing Conditions

- compatibility of any new diagnoses or clinical findings to the mechanism of the accident and the accepted work-related injury,
- clinical evidence of improvement/resolution or progression/deterioration of the symptomology and clinical findings attributable to the **work-related injury**,
- clinical evidence of improvement/resolution or progression/deterioration of the symptomology and clinical findings attributable to the **pre-existing condition**,
- whether the pre-injury job was a suitable occupation for the worker, given any functional limitations related to the worker's pre-existing condition,
- the weight of the clinical evidence when the health care professionals involved in the case have conflicting opinions on diagnosis, prognosis, treatment, causation and functional abilities or physical precautions.

Decision makers may also obtain a clinical opinion for assistance with issues of causation, mechanism of injury, pathology, and interpretation of the clinical evidence on file.

Where the current level of impairment would not exist if the work-related injury had not occurred, it would generally be considered that the work-related injury continues to be a significant contributing factor to the ongoing impairment.

In cases where the current level of impairment would continue even if the work-related injury had not occurred, decision-makers would then consider whether the work-related injury is causing a similar level of impairment. If it is, then the work-related injury continues to be a significant contributing factor to the ongoing impairment.

Where the impairment from the work-related injury would not cause a similar level of impairment as that of the ongoing impairment, it may still be a significant contributing factor to the ongoing impairment. To make this determination, decision-makers may consider factors such as whether

- the worker is receiving treatment for the work-related injury
- the impairment caused by the work-related injury results in functional limitations that affect the worker's ability to participate in work reintegration activities
- the impairment caused by the pre-existing condition results in functional limitations that affect the worker's ability to participate in work reintegration activities

In some cases, the above considerations may reveal the contribution of the pre-existing condition to the worker's ongoing impairment is so significant, in comparison to the work-related injury, that it renders the contribution of the work-related injury insignificant. The pre-existing condition would then be considered to have overwhelmed the work-related injury and entitlement to ongoing benefits and services ends.

Pre-existing Conditions

Permanent Impairments with Pre-existing Conditions

A worker is entitled to compensation for a permanent impairment resulting from a work-related injury/disease. A work-related impairment is considered permanent when clinical evidence indicates a work-related impairment continues to exist after the worker has reached maximum medical recovery, as outlined in Policy [11-01-05, Determining Permanent Impairment](#). A worker with an assessable work-related permanent impairment will receive a non-economic loss (NEL) benefit.

The worker's permanent impairment is determined as outlined in Policy [18-05-03, Determining the Degree of Permanent Impairment](#). When a pre-existing condition is contributing to the degree of total impairment to the same area of the body as the worker-related injury, the NEL decision-maker

- rates the total impairment to the area according to the prescribed rating schedule
- determines the rating for the pre-existing condition according to the prescribed rating schedule, and
- subtracts the rating for the pre-existing condition from the total impairment rating to get the rating for the new work-related impairment.

Where the pre-existing condition is considered to have overwhelmed the impact of the work-related injury to the ongoing impairment, it is generally unlikely that a work-related permanent impairment exists. However, there may be exceptional cases where there is clear clinical evidence of an assessable permanent impairment resulting from the work-related injury, despite the significance of the impairment due to the pre-existing condition. In those cases, the worker may receive a NEL benefit even when the continued payment of loss of earnings benefits is not supported.

Conclusion

To comply with the pre-requisite of work-relatedness outlined in section 13 of the WSIA, the WSIB must have regard for clinical evidence of a pre-existing condition that affects the same area of the body or system as the work-related injury/disease when determining ongoing entitlement in a claim. The mere existence of a pre-existing condition does not disqualify a worker from initial entitlement for a work-related injury/disease, nor does it automatically affect the worker's ongoing entitlement.

The intent of Policy [15-02-03, Pre-existing Conditions](#), is to provide clarity and consistency in decision-making and outcomes for both workers and employers by setting a fair threshold for when benefits may end. When both the work-related injury/disease and the pre-existing condition are contributing to the ongoing impairment, the WSIB will continue ongoing benefits until the contribution of the pre-existing condition to the worker's ongoing impairment becomes so great that it overwhelms that of the work-related injury/disease.

Document History:

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