

Section

Non-Economic Loss (NEL) (Accidents from 1990)

Subject

Determining the Degree of Permanent Impairment

Policy

A worker who has a work-related permanent impairment is entitled to a non-economic (NEL) benefit based on the degree of his/her work-related permanent impairment determined by the decision-maker. The decision-maker uses a prescribed rating schedule, all relevant health care information in the claim file and, if required, a report from an independent medical assessment, to determine the degree of permanent impairment.

If a condition other than the work-related injury/disease is contributing to the total degree of impairment to the area, the degree of impairment caused by the work-related injury/disease is determined.

If a determination results in a zero percent rating, there is no permanent impairment and no entitlement to a NEL benefit.

Principles

Workers are entitled to compensation for their non-economic loss if a work-related injury/disease results in a permanent impairment.

Purpose

The purpose of this policy is to set out what a NEL benefit compensates for and how the degree of permanent impairment is determined.

Guidelines

NEL Benefit

A NEL benefit compensates for work-related permanent impairments that have been determined to exist per 11-01-05, Determining Permanent Impairment.

A NEL benefit is payable regardless of whether the permanent impairment affects a worker's ability to work.

Degree of permanent impairment

General

A prescribed rating schedule is used to determine the degree of the permanent impairment once a permanent impairment has been identified per 11-01-05, Determining Permanent Impairment.

If a type of impairment is not listed in the prescribed rating schedule, the decision-maker uses criteria in the prescribed rating schedule for the body parts, systems, or functions which are most similar to the worker's impairment.

**Operational
Policy**

Section

Non-Economic Loss (NEL) (Accidents from 1990)

Subject

Determining the Degree of Permanent Impairment

The degree of permanent impairment is expressed as a percentage of total permanent impairment of the whole person.

For certain permanent impairments, there are exceptional rating methods. See

15-04-01, Traumatic Hearing Loss

16-01-01, Determining Permanent Impairment Due to Asthma

16-01-04, Noise-Induced Hearing Loss, On/After January 2, 1990

16-01-08, Tinnitus, Post-January 2, 1990

16-01-09, Determining Permanent Impairment due to Hand Arm Vibration Syndrome

16-02-19, Scleroderma & Occupational Exposure to Silica Dust

18-05-11, Assessing Permanent Impairment Due to Mental and Behavioural Disorders.

Health care information on file

The decision-maker determines the degree of the permanent impairment by considering the health care information available in the claim file. If the worker's physician or other health care professional cannot provide sufficient health care information to determine the degree of the worker's permanent impairment, the decision-maker may arrange for the worker to attend an independent medical assessment.

If the worker attends an independent medical assessment, the WSIB sends a copy of the assessment report to the worker.

An employer may request a copy of the independent medical assessment report without there being an issue in dispute. If requested, the worker is notified and given 21 days to object to the release of the report. If the worker does object, the WSIB follows the guidelines set out in 21-02-02, Disclosure of Claim File Information (Issue In Dispute).

Decision-makers may use information in the independent medical assessment to assist in determining a worker's entitlement to other benefits and services.

If a worker suffers a wage loss in order to attend a NEL assessment, they are entitled to compensation for the wage loss, see 18-05-10, Wage Loss for NEL Assessment.

In cases where the worker cannot attend an independent medical assessment, the WSIB may modify the process normally followed to determine the degree of permanent impairment. Examples of such cases are

- workers who move outside of Ontario
- serious illness or death, and
- incarcerated workers, see 15-06-06, Incarcerated Workers.

Multiple impairments

In some cases, more than one area of permanent impairment may be considered at the same time for the purposes of determining the overall degree of permanent impairment. The

**Operational
Policy**

Section

Non-Economic Loss (NEL) (Accidents from 1990)

Subject

Determining the Degree of Permanent Impairment

decision-maker rates each impairment according to the prescribed rating schedule and then combines the ratings using the prescribed rating schedule.

Determinations post-final benefit review

A NEL benefit can be determined post-final future economic loss (FEL) review (60 month post-initial FEL determination) or post-final LOE review (72 months post-injury) if

- a worker received a zero NEL rating for an impairment (post January 1, 1998) but experiences a significant deterioration in his/her work-related condition which results in an increase to the rating of that impairment
- a worker does not have entitlement to a NEL benefit for any impairment, however, a new area of entitlement to a permanent impairment is identified after the expiration of the final benefit review period which results in a rating which is greater than zero per cent.

For entitlement to NEL redeterminations post-final benefit review, see 18-05-09, NEL Redeterminations.

If a permanent impairment has been established post-final FEL/LOE review, the FEL/LOE benefit may also be reviewed. The FEL/LOE benefit review period continues for a period of up to 24 months from the date the resulting NEL benefit is processed. If the determination of the degree of permanent impairment results in a zero rating, the review ends as of the date of that determination. See 18-04-20, Final FEL Benefit Review or 18-03-06, Final LOE Benefit Review.

Pre-existing conditions and prior work-related permanent impairments

When determining the degree of work-related permanent impairment for workers who have a pre-existing condition, see 15-02-03, Pre-existing Conditions, or a prior work-related permanent impairment, the decision-maker

- rates the area of the body affected by the work-related permanent impairment
- disregards any pre-existing conditions affecting other areas of the body, and
- factors out pre-existing conditions and prior-work-related permanent impairments affecting the same area of the body.

Pre-existing condition affecting a different area of the body

If a pre-existing condition affects a different area of the body, the decision-maker rates the new work-related impairment on its own without any reduction for the pre-existing condition.

Pre-existing condition affecting the same body area

To factor out a pre-existing condition, it must be established that it is contributing to the degree of impairment to the same area of the body as the work-related permanent impairment.

**Operational
Policy**

Section

Non-Economic Loss (NEL) (Accidents from 1990)

Subject

Determining the Degree of Permanent Impairment

To establish this, the evidence must show that the pre-existing condition, on its own, would result in an impairment rating. The pre-existing existing condition does not need to have produced periods of impairment or disease requiring health care, or have caused a disruption in employment, in order to factor out its rating from the total impairment rating.

If it is established that a pre-existing condition is contributing to the degree of total impairment to the same area of the body, the 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.

If the pre-existing condition cannot be rated according to the prescribed rating schedule, the medical significance of the pre-existing condition is determined based on the clinical evidence and the decision-maker reduces the total impairment rating of the area according to the determination.

If the significance of the pre-existing condition is

- minor, there is no reduction
- moderate, there is a 25% reduction
- major, there is a 50% reduction.

If it is determined that a pre-existing condition has been permanently aggravated by a work-related injury/disease, only the permanent impairment rating for the pre-existing condition that existed at the time of injury/disease is offset.

Pre-existing NEL benefit affecting a different area of the body

If a worker with a pre-existing NEL benefit has a new permanent impairment that affects another area of the body, the decision-maker determines the second NEL benefit by

- rating the new impairment independently of the prior impairment
- combining the old and new ratings using the prescribed rating schedule, see 18-05-04, Calculating NEL Benefits, and
- subtracting the prior impairment's rating from the combined value.

Pre-existing NEL benefit affecting the same area of the body

If a worker with a pre-existing NEL benefit has a new injury that results in an increased impairment to the same area of the body, the decision-maker determines the second NEL benefit by

- rating the total impairment to the area, and
- subtracting the existing NEL rating from the total rating, see 18-05-04, Calculating NEL Benefits.

**Operational
Policy**

Section

Non-Economic Loss (NEL) (Accidents from 1990)

Subject

Determining the Degree of Permanent Impairment**Pre-existing NEL to the same and different body areas**

If a worker with a pre-existing NEL benefit has a new injury resulting in both an increased impairment to the same area of the body, and a new impairment to a different area of the body, the decision-maker determines the second NEL benefit by

- rating the total impairment to the area for which a NEL already exists, and subtracting the pre-existing NEL
- rating the impairment to the different area of the body, and
- combining the above values, using the prescribed rating schedule.

Pre-existing permanent disability pension affecting a different area of the body

If a worker suffered an injury before January 2, 1990 which resulted in a permanent disability (PD) pension, and then suffers a work-related permanent impairment to a different body area on or after January 2, 1990, the decision-maker rates the post-January 2, 1990 impairment on its own.

Pre-existing PD pension affecting the same area of the body

If a worker suffered an injury before January 2, 1990 which resulted in a PD pension, and then suffers a work-related permanent impairment to the same body area on or after January 2, 1990, the decision-maker

- rates the total impairment to the area
- converts the permanent disability rating to a permanent impairment rating using the prescribed rating schedule, and
- subtracts the converted disability rating from the total area's impairment rating.

Post-accident non-work-related condition

When determining the degree of permanent impairment where a post-accident non-work-related condition exists, the decision-maker

- rates the area of the body affected by the permanent impairment
- disregards any post-accident conditions affecting other areas of the body, and
- factors out post-accident conditions affecting the same area of the body.

Post-accident non-work-related conditions include

- injuries sustained after the injury/disease as a result of a non-work-related accident
- deterioration of a pre-existing condition
- physical conditions (e.g., cardiac, hernia) that arise after the injury/disease.

For more information about post-accident non-work-related conditions, see 15-05-03, Non-Work-Related – Second Accidents and 15-06-08, Adjusting Benefits Due to Post-accident, Non-work-related Change in Circumstances.

Loss of earnings benefits

The degree of permanent impairment determined does not affect entitlement to any loss of earnings (LOE) benefits that may be payable, except in cases where the degree of impairment is determined to be zero, see **Zero percent NEL rating** section below.

Zero percent NEL rating

A zero percent NEL rating indicates that the worker does not have an assessable permanent impairment.

As a result, FEL benefits and supplements, if any, or LOE benefits, are paid until the worker is notified in writing, up to a maximum of 2 weeks, see 18-04-15, Effect of a 0% NEL Rating on FEL Benefits, and 18-03-02, Payment and Reviewing LOE Benefits (Prior to Final Review).

Payment of NEL benefit

For information on how the decision-maker calculates and pays NEL benefits resulting from an initial determination, including the special cases noted above, see 18-05-04, Calculating NEL Benefits.

Redeterminations

If the work-related condition significantly and permanently deteriorates after a permanent impairment is rated, the worker can apply for a redetermination, see 18-05-09, NEL Redeterminations.

Application date

This policy applies to all decisions made on or after November 1, 2014, for accidents on or after January 2, 1990.

Policy review schedule

This policy will be reviewed within five years of the application date.

Document history

This document replaces 18-05-03 dated October 1, 2011 and 18-05-05 dated October 12, 2004.

This document was previously published as:

18-05-03 dated July 18, 2008
18-05-03 dated October 12, 2004
18-05-03 dated June 15, 1999
6.2* dated January 1, 1998.

* This document was replaced by 18-05-03 dated June 15, 1999.

Section

Non-Economic Loss (NEL) (Accidents from 1990)

Subject

Determining the Degree of Permanent Impairment

References

Legislative authority

Workplace Safety and Insurance Act, 1997, as amended
Sections 2(1), 46, 47, 58, 59, 106

O. Reg. 175/98
Section 18

Workers' Compensation Act, R.S.O. 1990, as amended
Sections 1(1), 42

R.R.O. 1990, Reg. 1102
Section 15

Minute

Board of Directors
#1, September 7, 1990, Page 5388
#1, February 11, 1991, Page 5427
#1, March 1, 1991, Page 5433

Administrative
#3, September 22, 2014, Page 518