

Adjudicative Advice

Commutations And FEL/LOE Benefits Over 10 %

LOE Benefits over 10%

For accidents/diseases occurring on or after January 1, 1998, section 62 of the *Workplace Safety and Insurance Act* (WSIA 1997) applies.

The WSIA eliminated the general commutation provision, however loss of earnings (LOE) benefits can be paid as a lump sum, if 10 per cent or less, at the point the WSIB is no longer able to review the payments. An LOE benefit over 10% cannot be commuted.

See OPM document 18-03-05 respecting commutations of LOE benefits.

FEL Benefits over 10%

In 1996 Future Economic Loss (FEL) R2 reviews began. Since then some questions have periodically been raised about whether FEL benefits over 10 per cent, which cannot be paid as a lump sum as per s.43 (15) of the *Workers' Compensation Act* (Pre-1997) (WCA), could be commuted under s.27 (1) (WCA).

The policy contained in *Operational Policy Manual* (OPM) Document 18-04-08, confirms that the FEL benefit, if 10 per cent or less, may be commuted if the worker does not choose to receive periodic payments. It also indicates that where there may be FEL benefits paid in more than one claim, each claim

is treated as a separate entity for the purposes of this policy.

What this means is that, given the plain meaning of s.43 (14), and the exception provided by s.43 (15), FEL benefits are paid periodically unless the benefit is 10 per cent or less. Where the FEL benefit is 10 per cent or less, the worker does have the option of receiving a lump sum but can also choose to continue to receive periodic payments. Further, it would appear that there is strong evidence that both s.43 (14) and (15) are stand-alone provisions, and are not to be read with reference to s.27 (1).

Although it is not possible to know the intent of the legislation, s.43 was a more recent addition to the Act than s.27, and in order to give meaning to the exception provision, it is reasonable to conclude that s.27 does not apply with respect to FEL benefits. **Therefore, once a FEL benefit in one claim exceeds 10 per cent, it cannot be commuted.**

Benefits Policy Branch
June 1996 (updated June 2005)

Claims Quality Loop
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Notice: This document is intended to assist WSIB decision-makers in reaching consistent decisions in similar fact situations and to supplement applicable WSIB policies and guidelines as set out in the *Operational Policy Manual* (OPM). This document is **not a policy** and in the event of a conflict between this document and an OPM policy or guideline, the decision-maker will rely on the latter.