

### Aggravation Basis

#### Introduction

The WSIB has a new policy entitled Aggravation Basis, Policy #11-01-15. This new policy applies to all decisions made on or after January 1, 2005.

This policy identifies when entitlement on an aggravation basis is accepted.

Entitlement is only considered when a worker has a pre-accident impairment and suffers a MINOR work-related injury or illness to the same body part or system that causes a worsening of the condition. Benefits continue only until the worker returns to the pre-accident state.

The purpose of this TIPS article is to:

- discuss the concept of allowance in a claim on an aggravation basis
- clarify the intent of the policy and
- outline the steps to take to determine if entitlement should be limited on an aggravation basis

#### Guidelines

Generally, employers are not responsible for a worker's prior medical condition. Occasionally, however, a MINOR work related accident will aggravate a prior condition. In these situations limiting entitlement on an aggravation basis may be considered.

The intent of the policy is to limit entitlement to the work-related injury only. To consider allowance on an aggravation basis, a pre-accident impairment (a condition requiring

regular health care, work modifications and/or lost time from work) must be present. Since it was already affecting a worker to some degree prior to the minor work accident, we accept only the temporary period of worsening caused by the aggravation.

Entitlement ends when the aggravation ceases. To determine when this occurs, a comparison is made between the pre and post accident state.

Entitlement is not limited if there is no pre-accident impairment, or the accident on its own would have caused the increased impairment.

#### Example

Ron has a history of back problems. He has a L5-S1 level herniated disc.

To keep his symptoms under control, Ron sees his chiropractor monthly. He also has permanent restrictions of no heavy lifting.

On January 14, 2005 Ron stepped off his forklift and twisted his low back.

He felt immediate pain and sought treatment with his chiropractor the same day.

He was diagnosed with a back strain and as a result now required chiropractic treatment three times per week.

Ron returned to his pre injury job on January 29, 2005, and resumed his monthly chiropractic treatments.

**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.

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Let's review this example with the Policy:

- A significant pre-accident impairment exists. (L5-S1 herniated disc that required health care and work restrictions prior to the work accident)
- A minor work accident occurred. (minor twist action)
- The pre-accident impairment worsened. (additional treatment and lost time was required)
- The acute or temporary worsening of his condition ended on January 29, 2005 when Ron returned to work, and monthly chiropractic treatment.

Therefore, this claim meets the criteria and is allowed on an aggravation basis. Benefits stop on the day the worker returns to the pre-accident state.

Entitlement ends when the aggravation ceases. To determine when this occurs, a comparison is made between the pre and post accident state.

## Determining Entitlement

### 1. Recurrence versus New Claim

If a worker has a prior work-related injury for the same area (with or without a Non Economic Loss (NEL) or Permanent Disability (PD) Award) then entitlement should generally be considered as a recurrence.

This would occur when a minor work accident has occurred or it is difficult to identify a specific incident or action that has increased the worker's impairment.

If a worker has a prior non work-related pre-accident impairment for the same area and a clearly defined MINOR work accident occurs, the claim would be allowed on its own merit as a new claim and entitlement limited on an aggravation basis.

### 2. (A) Determine if a pre-accident impairment exists.

A pre-accident impairment is a condition that has caused a disruption in employment, such as lost time from work, accommodations at work, and/or required health care attention such as:

- Attending daily, weekly or monthly physiotherapy or chiropractic treatment
- Seeing a specialist/undergoing tests
- Receiving inpatient treatment at a hospital

A pre-accident condition is not considered a pre-accident impairment if it has not caused a disruption in employment and required only passive health care treatment such as:

- yearly appointments with the family doctor
- taking prescription medication as needed or taking non-prescription medication

It is important that decision-makers identify when reviewing medical reports and/or medical consultant opinions that the use of the term "Aggravation" does not automatically mean there is a pre-accident impairment.

#### Example:

Sue suffered a low back injury on January 31, 2005 as a result of a MINOR work accident, when she twisted while reaching overhead to prevent an empty box from falling from the shelf. A low back strain was diagnosed and an X-ray of the lumbar spine revealed degenerative disc disease (DDD).

Although a medical consultant's opinion on file indicated that Sue had aggravated her pre-accident DDD, the decision-maker had confirmed with Sue that she had not had any prior back problems that required health care, work restrictions or lost time from work. As a result she does not have a pre-accident impairment.

Therefore, there is no limitation on entitlement on an aggravation basis as there was no pre-accident impairment.

## **2. (B) Determine work related accident severity**

Determining the severity of the accident is a non-medical decision determined by the adjudicator and is strictly an evaluation of the action that caused the injury. It is not based on the actual injury(s) sustained or diagnosed and is evaluated using the information provided on the worker and employer report of accident.

A MINOR accident is one that would be expected to cause a non-disabling or minor disabling injury/illness in an individual with no existing impairment.

The following actions are considered:

- the mechanics of the injury /weights involved - (lift, push, pull, push, fall, slip, blow, etc.),
- the position of the worker at the time of the accident - (sitting, standing, kneeling, squatting, climbing, bending, etc.)
- the environment - (lighting, terrain, weather conditions)

Let's look at some examples:

### **Example #1: Pre-accident Impairment/ Minor Accident**

Jane has bronchial asthma, which is controlled by medication. On January 2, 2005 after being exposed to a coworker's strong scented perfume in the workplace, Jane suffered an increase in her symptoms necessitating health care treatment.

An increase in the dosage and frequency of medication was prescribed and she was taken off work for a few days. Jane recovered from the flare up and is medically cleared to return to regular work on January 5, 2005.

Jane aggravated a pre-accident impairment on January 2, 2005 and is entitled to benefits for the acute phase only.

Jane's respiratory condition returned to its pre-accident state on January 5, 2005 and entitlement ended.

Any remaining precautions pertain to the pre-accident impairment.

### **Example #2 : Pre-accident Impairment/ Moderate Accident**

Joe suffered a work related back injury on February 3, 2005 when he slipped in a stairwell falling down 10 steps, fracturing three vertebrae. Joe was unable to return to pre-accident employment due to the fall. Joe has a history of back problems and had undergone surgery in 2003.

At the time of the accident Joe was working as a plumber with medical restrictions and was continuing to see his family doctor on a monthly basis regarding pain control issues. During these appointments his pain medications were being changed regularly.

Joe sustained a moderately severe back injury due to the fall. There is no limitation on entitlement as falling down 10 stairs could cause the injury Joe sustained regardless of his pre-accident impairment.

### **Cost Relief**

Although Second Injury and Enhancement Fund (SIEF) only applies to Schedule 1 employers, the aggravation basis policy applies to both Schedule 1 and 2 employers.

As the pre-accident impairment significantly contributes to the work-related injury or illness, SIEF is applied immediately in all schedule 1 claims where entitlement has been limited on an aggravation basis.

The SIEF percentage in these types of claims would be 90% based on the **MINOR accident severity and MAJOR pre-accident impairment.**

There is no need for a medical opinion on the severity of the pre-accident impairment.

### **Informing Workplace Parties:**

Once a decision has been made to limit entitlement on an aggravation basis, a memo is written to document the decision. All parties are advised verbally and in writing so there is no misunderstanding of the limitations.

The claim jacket is updated to indicate the decision.

### Ongoing Benefits

Once entitlement is limited on an aggravation basis monitoring of the workers status continues until the worker returns to the pre-accident state, which is the level of impairment and work capacity he/she was at prior to the work related accident.

The medical consultant and nurse case manager can assist decision-makers in recognizing when the worker has reached the pre-accident state by closely and regularly monitoring medical reports and providing medical/clinical opinions.

Benefits are discontinued if the worker remains off work after reaching the pre-accident state and all parties are advised accordingly.

### Permanent Impairment

In some cases a worker may never return to his/her pre-accident state.

Once it has been determined that a permanent worsening has occurred, the worker may be entitled to a Non Economic Loss (NEL) award.

For more information, see policy 18-05-05, Effects of a Pre-Existing Impairment and 18-05-03, Assessing Permanent Impairment

#### Apply what you Have Learned:

(Check your answers on Page 6)

### Scenario 1.

Bob, was working as plant foreman when he slipped in oil on the plant floor causing him to twist his right knee on January 3, 2005. The claim was allowed by primary adjudication.

The physician's first report provided a diagnosis of right knee strain/ osteoarthritis, and authorized Bob off work. The physician also indicated that Bob had a history of right knee problems over the years from playing hockey and as a result had undergone surgery in 1997.

At the time of the work accident, Bob had no medical restrictions or the need for any medical treatment for his right knee. He had not had any problems with the knee since the surgery in 1997.

You are considering Bob's case on an aggravation basis due to the prior problems indicated.

#### Questions:

1. Does Bob have a pre-accident impairment?  
 Yes  No
2. Should entitlement be limited on an aggravation basis?  
 Yes  No

### Scenario 2

Jim was working as a welder when he reached across his workbench for his 3-lb welding gun and injured his low back on January 5, 2005.

The chiropractor's report provided a diagnosis of lumbar strain superimposed on severe degenerative disc disease (DDD). Jim was authorized off work and an increase in treatment to three times per week was recommended. The claim was allowed by primary adjudication.

Medical reports indicated that at the time of the accident, Jim had been receiving monthly chiropractic treatment, and had medical restrictions to avoid prolonged sitting and standing.

#### Question:

1. Should entitlement be limited on an aggravation basis and SIEF applied immediately?  
 Yes  No

On February 2, 2005 a medical progress report indicated that Jim's condition had improved and once again only required monthly chiropractic treatment and could return to work avoiding prolonged sitting and standing.

**Question:**

1. Had Jim returned to his pre-accident state as of February 2, 2005?

Yes  No

**Scenario 3**

On February 4, 2005 while assembling a bumper hood Sue bent over to pick up a 2-lb. torque gun from the floor and hurt her back. The physician's first report provided a diagnosis of lumbar sacral strain and an aggravation of degenerative disc disease.

A medical opinion was requested on the compatibility of the lumbar strain/DDD to the accident history prior to accepting initial entitlement.

The medical consultant indicated that the lumbar sacral strain was compatible with the work injury and that Sue had also aggravated her pre existing condition of DDD.

The medical reports on file and the medical consultant opinion both indicate an aggravation of a pre-accident impairment.

**Question:**

1. To determine if her DDD is a pre-accident impairment what should the adjudicator do first?

- a) allow the claim on its own merit and limit entitlement on an aggravation basis
- b) contact the worker for a statement on her prior history
- c) send out medical waivers to obtain all her prior medical from her physician
- d) deny the claim

Sue indicated that she never had any problems with her back, and was not aware she had DDD. She also has no physical restrictions with respect to her job and has never lost time from work due to her back.

**Question:**

2. What would you do now?

- a) Allow the claim on its own merit and limit entitlement on an aggravation basis.
- b) Deny the claim
- c) Allow the claim on its own merit and monitor SIEF

**ANSWERS:**

**Scenario 1**

1. No.

Bob had not had medical attention or required accommodations or lost time from work for many years.

2. No.

Bob does NOT have a pre-accident impairment; therefore there would be no limitation of entitlement.

If the claim were prolonged as a result of the underlying osteoarthritis then SIEF would be applied at the appropriate time.

**Scenario 2**

1. Yes.

Jim has a pre-accident impairment that worsened as a result of a minor lifting accident and SIEF is applied immediately.

2. Yes.

As of February 2, 2005 Jim was able to return to his job as a welder.

Medically he again only required monthly chiropractic treatment.

Jim's condition returned to its pre-accident state and his benefits would be discontinued.

The acute period of the limitation of benefits was January 5, 2005 to February 2, 2005.



### Scenario 3

1. **b. is correct**

Although different enquiries and information may be required a statement should first be taken from the worker

2. **c. is correct**

Sue had not required any treatment or modifications to her job prior to the minor work accident due to her degenerative disc disease. Although she suffered a minor work accident, she does not have a pre-accident impairment and therefore no limitation of entitlement is indicated. If her recovery becomes enhanced or prolonged due to the degenerative changes in her back SIEF would be reviewed and applied after the usual healing time was achieved.

### Summary:

When a minor work accident to the same body part or system aggravates pre-accident impairment, the WSIB considers limiting entitlement on an aggravation basis.

#### The 3 criteria:

1. Significant Pre-accident Impairment
2. New Minor Work Related Accident
3. Worsening of the Pre-accident Condition  
= Aggravation Basis

When entitlement is limited on an aggravation basis, benefits are paid for the acute worsening period only.

Take some time and complete the Aggravation Basis web based training located on Learning Made Simple (LMS) on CONNEX.

Just click on WSIB Pages and then the learning page.