

AWCBC IJA Committee

Long Latency Occupational Disease Claims
Jurisdictional Information

Goal: To standardize the sufficiency of evidence in adjudication of occupational disease claims.

Action: To provide baseline jurisdictional information regarding current requirements for sufficiency of evidence when adjudicating long latency disease claims.

Jurisdiction and Contributor	What evidence / information does your jurisdiction require when adjudicating long latency occupational disease claims?	Does your jurisdiction have a standard regarding sufficiency of evidence / information when adjudicating long latency occupational disease claims, or is this determined on a case by case basis?	How is employment history corroborated when adjudicating long latency occupational disease claims?
<p>Alberta (Val Krushniruk)</p> <p>October 2012 – No update provided</p>	<p>Employers Report, Workers Report (if employer still in existence or worker not deceased), and all related medical since illness or symptoms started.</p> <p>Confirmed Alberta employment or that the worker was covered under Alberta jurisdiction if out of province/country when illness developed.</p> <p>Right of election if Asbestos claim.</p> <p>Confirmed diagnosis based on medical.</p> <p>Probable medical review by medical consultant.</p> <p>Confirmation of work history, occupations and job descriptions.</p> <p>MSDS sheets for the hazard identified in the workplace.</p> <p>Confirmation of how worker was</p>	<p>No standard regarding sufficiency of evidence/information required for adjudication.</p> <p>Apply principles of fairness and natural justice when considering all relevant evidence on new claims or existing claims under review under Policy 01-08.</p> <p>Policy 02-01 applied, specifically, evidence and statutory presumption sections.</p> <p>There is a standard for evidence/information required for claims from firefighters under the Firefighters legislation/regulations.</p>	<p>Employment history is corroborated by reviewing any prior claims the worker may have, CPP information, union records, and co-worker/witness statements.</p> <p>If the employer in question is still in existence, information is gathered directly from them. An investigation of the site may be performed.</p>

AWCBC IJA Committee

<p>British Columbia (Jay Rowland)</p> <p>October 2012 - No change to information provided previously. No new information to report.</p>	<p>exposed/encountered hazard.</p> <p>Determine whether the long latency disease is listed in the presumptive schedule of occupational diseases (<u>26.21</u> Schedule B Presumption).</p> <p>Determine whether the worker meets the <i>description of process or industry</i> set opposite such disease in the schedule. If worker meets above criteria, disease will be deemed to be due to the employment unless the contrary is shown. To rebut the presumption, the evidence must establish, on a balance of probabilities, that the employment did not play some significant role in causing the disease.</p> <p>If the presumption applies, the worker need not submit evidence that the disease is work caused (the presumption only applies if the worker was employed in the described work immediately before being disabled by the disease.</p> <p>If the presumption does not apply, careful work history is taken to determine possible exposure to carcinogens, substances or chemicals etc. over the entire working career. Smoking history and family history are considered for development of disease. Evidence regarding non-occupational risk factors is sought.</p>	<p>If presumption does not apply, then adjudication proceeds on a case by case basis. The legal test is that of 'causative significance'. If possibilities are evenly balanced, section 99 of the Workers Compensation Act applies (benefit of doubt).</p> <p>Each claims unique circumstances, exposures and personal risk factors are examined. As much relevant information as can be obtained. There are often barriers due to the passage of time (unavailable medical, employer no longer in business, worker deceased).</p> <p>Often use Occupational Hygiene Officers to review the case, call employer, review inspection reports and provide a profile of exposure history (low, moderate or high) with time references (historical estimate of exposure).</p> <p>Medical advisors search published epidemiological evidence to determine risk for development of disease. They may also comment on personal risk factors and their impact (smoking, intrinsic disease, hereditary factors etc.).</p> <p>Following the above investigation, a decision will be made based on whether the evidence supports that work (in our jurisdiction) was of significance to the development of disease or not. If so, the claim is accepted without apportionment (occupational vs. non-occupational) by causal factors.</p> <p>The word significant is not defined in legislation, but means the work must have played a greater than minimal role in contributing to the disease.</p>	<p>Confirmation of exposure evidence if employer still in business. Union records, payroll information or information from spouse, co-workers or others.</p> <p>Challenging claims as usually multi-faceted.</p>
<p>Manitoba</p>	<p>Determine if worker was/is employed in</p>	<p>Case by case basis.</p>	<p>If employer is no longer in business, the</p>

AWCBC IJA Committee

<p>(Ken Langton)</p> <p>October 2012 – No changes to information provided previously. No new information to report.</p>	<p>covered industry when exposure occurred. Determine whether worker was performing employment activities when exposure occurred. Determine if date of exposure and date of diagnosis (latency period) is consistent with current medical literature. Determine whether employment activities put the worker at greater risk of exposure and development of their condition than their non-employment activities, if so, the claim will be accepted.</p>	<p>Must be able to establish that exposure occurred while the worker was in the course of their employment in a covered industry. For asbestos related conditions only one exposure is necessary.</p>	<p>worker is asked if they have any documentation confirming their employment. Look for prior claims which may have information about previous employers. Co-workers may be able to confirm employment, as well as information about employment activities and exposure. We also check whether co-workers have had previous claims which may include relevant information. Claim search of the employer to determine if other claimants with similar conditions. CPP for details of pension contributions for the relevant period.</p>
<p>New Brunswick (Carol Veysey)</p> <p>October 2012 – See changes</p>	<p>Evidence of exposure, type of exposure, frequency of exposure use of personal protective equipment, confirmation of the disease, site of the cancer and latency period, workers medical records, specialist reports, pathology reports and evidence of alternate causes.</p>	<p>Case by case basis on own merits. As per the current adjudication process (<u>Current Adjudication Process</u>); Dedicated Medical Advisor to assist in understanding the evidence on file and provision of an opinion (based on scientific and medical literature and epidemiological evidence) with respect to causality. External consultant specializing in occupational medicine, toxicology or epidemiology is used when required to assist in determining causality. Dedicated decision maker weighs evidence and takes following factors into consideration: expertise of individual providing opinion, accuracy of facts relied upon by provider of opinion, issues of bias or objectivity with opinion, objective vs. subjective</p>	<p>Often a challenge. Proof or evidence from the worker, such as, pay stubs, information from Revenue Canada etc. Investigators are sometimes used to assist with contacting co-workers/supervisor to obtain statement. In some cases, claim denial had occurred because it was not possible to confirm employment or exposure. If the employer in question is still in existence, information is gathered directly from them. Otherwise, employment history is corroborated by</p>

AWCBC IJA Committee

		<p>medical evidence, findings of relevant scientific studies referenced by qualified medical practitioner and dates of those studies to ensure current information is being considered.</p> <p>The claim is accepted when the decision maker determines that the exposure did occur and was the probable cause of the disease.</p>	<p>reviewing any prior claims the worker may have, CPP information, union records, pay records, pension letters and co-worker/witness statements. Investigator may assist in contacting co-workers/supervisor for a statement. Exposure may already be documented in a claim from a co-worker.</p>
<p>Newfoundland (Ann Martin)</p> <p>January 2013 – response received</p>	<p>Workers Report. Medical Reports. Any non-work injury factors which could cause the condition are taken into consideration and determined through evidence in medical and worker’s verbal reports. Details regarding the type and intensity of exposure from both the worker and employer. MSDS sheets are obtained along with job descriptions, if available. If information cannot be obtained from an employer affidavits from co-workers are required with respect to work history and duration and/or type of exposures.</p>	<p>The claims are reviewed and adjudicated on their individual merits, utilizing the principles of EN-19 ‘Arising Out of and In the Course of Employment’ and EN-20 ‘Weighing of Evidence’ as noted in Policy. With respect to Asbestos related claims/conditions WHSCC Policy EN-14, outlines the latency and duration of exposure required in relation to various types of Cancer.</p> <p>For non-asbestos related claims for occupational disease, the Medical consultants assist with the review utilizing the scientific evidence and research available regarding the type and duration of exposure. Such reference material for scientific review may include, IRSST, WHO, CCOHS (Centre for Occupational Health and Safety), IARC (International Agency for Research on Cancer). In some cases an external Occupational Medicine Specialist or toxicologist may be consulted.</p>	<p>In the absence of information directly from the employer, information may be obtained from: evidence from worker’s previous claims with the exposure employer, affidavits from co-workers, or confirmation of employment from Union records. Consideration may sometimes be given to T4 slips, or pay stubs if available.</p>
<p>Northwest Territories (David King)</p> <p>October 2012 – No update provided.</p>	<p>Workers claim form, verification of employment (if available), exposure history (if available), all relevant medical information documents (consultations, investigations, confirmed diagnosis) and</p>	<p>Case by case basis.</p>	<p>Verification/reports from the employer, old pay stubs, Revenue Canada T4’s, sworn affidavits from the worker or co-workers.</p>

AWCBC IJA Committee

	independent consultation review by an expert in the relevant area of medicine.		
<p>Nova Scotia</p> <p>May 2013 – Response received</p>	<p>We require an Occupational Disease claim form provided by the worker which allows the worker to claim for one (or more) medical conditions, details on possible hazards and exposures, and provide a work history listing occupations, jurisdictions, and time periods. We then seek a confirmed medical diagnosis (medically dubious diagnoses are sometimes encountered i.e. Multiple Chemical Sensitivities). Certain conditions activate presumptive clauses (mesothelioma, lung cancer, laryngeal cancer, lead poisoning), and there are occupation –based presumptive clauses as well (firefighters, coal workers) If not presumptive, we’d proceed to establish cause and effect with regard to workplace factors and seek opinions from internal and external medical resources as required. Our Occupational Disease Entitlement Policy has details.</p>	<p>If presumption does not apply, we move to our Occupational Disease Entitlement Policy, on a case by case basis. The case worker must weigh the evidence, supported by medical opinions and research as required.</p>	<p>Employment history is corroborated by gathering records from prior WCB claims, CPP disability claims, requesting information from Service Canada, Revenue Canada, and information submitted by the worker (pay stubs, retirement info, union records). In some cases we would review information from former co-workers, supervisors, etc.</p>
<p>Ontario (Adil Dossa)</p> <p>October 2012 – No update provided.</p>	<p>Relevant prior and current employment information including dates and names (including any out of province), nature of business, job titles and location of companies. Exposure history including exposure agents, duration and frequency of exposure, work process and use of personal protective equipment. Medical</p>	<p>On a case by case basis the legal principles of ‘<i>causation test</i>’ (provides criteria for deciding if a condition is work related) and ‘<i>standard of proof</i>’ (provides degree of certainty- is the condition more likely than not work related) are applied to determine causal relationship and work relatedness of medical condition and employment activities.</p>	<p>Generally, the worker or the estate is relied on to provide dates of employment, names of companies employed with and positions held. The work history has to be supported by employment records from current and prior employers. If the employer is no longer in operation and no records are</p>

AWCBC IJA Committee

	<p>history (obtained by Advanced Practice Nurse Case Manager) including, dates of medical sought, names of physicians and specialists and information regarding testing and specialists. Information about potential non-occupational exposures and risk factors including, hobbies and interests, smoking history and alcohol use. The above information is usually collected from the worker or the estate as well as employers who are still in operation. Input is sought from internal resources, such as, Occupational Medical Consultant, Occupational Hygienist and Occupational Disease Policy and Research Branch.</p>		<p>available, one or more of the following are relied on; T4 or other income tax records, company pension or CPP/EI records, Union records, co-worker statements and prior WSIB claims.</p>
<p>Prince Edward Island (Kate Marshall)</p> <p>October 2012 – See changes</p>	<p>Workers Report, Employers Report (if still in operation) and a Medical Report including information pertaining to exposure would be required in order to proceed with claim adjudication. A workers report may have been submitted at the time of exposure and would have been in ‘record claim’ status until medical treatment was sought (perhaps following a period of latency).</p>	<p>Case by case basis based on degree of exposure or effect on the disease by both work and non-work causes. Medical evidence including latency, progression, nature of the disease and degree of exposure are reviewed. Non-work causes such as hobbies, medical conditions and industries or employment not covered under the Act are considered.</p> <p>Where an occupational disease occurs that is, in the opinion of the Board, due in part to the employment of the worker and in part to a cause or causes other than the employment, the Board may consider the claim where, in its opinion, the employment is the dominant cause of the occupational disease.</p> <p>For respiratory diseases, the following criteria are required to be met in order to be eligible for compensation;</p>	<p>Employers Report if employer still in operation. If not, tax information, Union information, previous claims, co-worker statements or medical information confirming place of employment at particular points in time. Attempts would be made to contact employers where exposure occurred.</p> <p>Workers report including information pertaining to exposure(s). The worker would be contacted to verify/clarify information.</p>

AWCBC IJA Committee

		<p>Must result from duties arising out of and in the course of employment, there is exposure to substances with irritating or inflammatory properties at the workplace and there is evidence, supported by appropriate diagnostic testing, of airway disease in the worker that can be reasonably related to the substances.</p>	
<p>Quebec (Danielle Dumas)</p> <p>October 2012 (Sophie Genest) – No changes to information previously provided. No new information to report.</p>	<p>Information can be in the form of scientific studies, studies recognized by the medical community or industrial studies conducted by different public health agencies.</p>	<p>Section 29 and Schedule 1 of the Act foresees the application of presumption to deal with eligibility of the claim which limits the need to seek evidence. Claims that are not eligible under Section 29 must be analyzed under Section 30 of the Act which relates to industrial accidents and occupational diseases. This requires comprehensive information gathering to show that the disease is occupational. Analysis is generally done on a case by case basis. For lung disease, there is a specific process stipulated in Sections 226 to 233 of the Act.</p>	<p>The employer (if still in operation) can confirm the workers professional experience. The commission can also have (with the contribution of the Prevention-Inspection Division) the industrial and professional background of certain employers. The commission can also extract from its database to see if there have been similar claims made by other workers. The Quebec Pension Board can confirm the list of employers corresponding to the number of years of professional experience declared by the worker. The union can also provide certain relevant experience.</p>
<p>Saskatchewan (Allan Basnicki)</p> <p>October 2012 – No update provided.</p>	<p>As per policy and procedure(3.1.5.4 <u>Injuries- Occupational Disease (POL 11/2003)</u>, 3.1.4 <u>Injuries- Occupational Disease (PRO 11/2003)</u> and 3.1.5.5 <u>Injuries- Fire Fighters and Cancer Related to Combustion Gases (POL 09/2003)</u>, medical diagnosis, possible causes, complete work and health history, employment history, as well as what, in</p>	<p>All cases are judged on their individual merits following procedural guidelines for adjudication of common occupational diseases.</p> <p>Medical diagnosis and possible causes are usually clarified with Medical Consultants.</p>	<p>Workers, employers and treating physicians would be contacted.</p>

AWCBC IJA Committee

	the workplace, would have caused the medical problems. All relevant and available medical information.		
Yukon (Donna Dymackova) October 2012 (Kathleen Avery) – No change to information provided previously. No new information to report.	No general policy on Occupational Diseases.	No general policy on Occupational Diseases.	No general policy on Occupational Diseases.

Updated June 2013