

Workers' Compensation - Pre 1990 Claims

For Injuries prior to January 1, 1990

For injuries before April 1, 1985, benefits are based upon 75% of gross pre-injury earnings. For injuries between April 2, 1985 and December 31, 1997, benefits are based on 90% of net pre-injury earnings. Pre-injury earnings are subject to a maximum ceiling (ie. so that earnings above that maximum, set yearly, are not covered).

The typical claim at Workers' Compensation for pre-1990 injuries goes through three stages:

1. TEMPORARY TOTAL

When you are first injured (if you are unable to work), you will receive payment of temporary total disability benefits. This means that the Workers' Compensation Board considers that, due to your injury, you are unable to work at any job. Temporary total disability benefits are paid biweekly.

2. TEMPORARY PARTIAL

As you begin to recover from your injury, payment moves into temporary partial disability benefits, also paid biweekly. You may not know that you have changed categories, because the amount of the payment can be the same as the temporary total benefits. Temporary partial benefits are paid when the Workers' Compensation Board is of the opinion that you are capable of performing suitable modified work, but are not yet ready to return to your previous employment. There are three types of temporary partial disability benefits:

- temporary partial full benefits, where you are co-operating with a rehabilitation program aimed at getting you back to work, paid at the full temporary total rate;
- temporary partial difference benefits, where you have returned to modified work, where the Board will supplement a wage loss up to your full benefit rate, taking into account the amount you are earning in wages; or
- temporary partial 50% (or less) benefits, paid at 50% (down to 0%) of the temporary total benefit rate, where you are not co-operating in a rehabilitation program which the Board considers would help you to return to work.

3. PENSION (PERMANENT DISABILITY AWARD)

As you continue to recover from your injury, there will come a point in time where you reach maximum medical rehabilitation. At that point, you will have either recovered entirely, with no lasting effects from your injury or you will continue to have a problem that will not get better over time. At that point the Workers' Compensation Board will call you in for an assessment of your permanent partial disability benefits. This benefit is paid monthly, in arrears.

There are three types of permanent disability awards:

- (a) organic - where you have a physical disability resulting from your accident (which is rated by a Board doctor, according to a chart that sets out maximum percentages);
- (b) psychological - where you have a mental disability as a result of your accident, (such as a fear of machines, etc.);
- (c) chronic pain - where the amount of pain you feel is out of proportion to the degree of injury, and where the pain lasts six months or more beyond the usual healing time for that injury, and where a marked life disruption has occurred as a result.

Once you receive your "pension", you will continue to be paid monthly. Pensions are payable until you die. Pensions can be paid retroactively back to the point where it was first evident that you were going to have a permanent problem. (The retroactive payment will have to take into account any periods of time when you were on full benefits from the Board, since you can not be paid more than 100% benefits).

You can ask to be reassessed to get an increase in your pension if your injury deteriorates gradually over time after

you were assessed for a pension. To be reassessed, you have to show that you are worse now than you were when you were last seen for a pension assessment. Any increase in your pension amount is payable retroactively back to the point where the worsening was first documented.

In the event that you have a sudden severe flare-up of your condition, you can ask the WCB to put you back on biweekly benefits. Again, you have to prove that you are worse now than when you were assessed for your pension. This means comparing the current physical findings with those noted in the WCB's report of your permanent disability examination. The biweekly benefits will continue until your condition has returned to the "pension" level (ie. your condition is again stable). You will then go back on your monthly pension benefits. At that point, the Board may decide to bring you in for a pension reassessment, if it looks as though your condition is going to be permanently worse than it was prior to the flare-up.

PENSION SUPPLEMENTS

In addition to your permanent disability award, you may be eligible for one of two types of supplement. Both types of supplement are paid once a month, in arrears.

Full Supplement

A full supplement will bring you back to close to the amount you got in two temporary total disability cheques. In order to get a full supplement, you must be co-operating in a medical or labour market re-entry program aimed at getting you back to work.

Labour Market Re-entry programs are provided to those injured workers who are ready, willing and able to participate on a full-time basis. The whole purpose is to give you the ability to earn what you used to earn, before you got hurt. The Board has no responsibility to see that you actually get a job, but only to try to restore your "earnings capacity". As such, the amount of retraining that you might get is limited by how much you were earning at the time you got hurt, because the Board won't retrain you for a higher paying job.

Once your Labour Market Re-entry program ends, the full supplement will stop.

Small Supplement(s)

The small supplements are paid in one of two scenarios:

- when no amount of retraining will help you return to what you used to earn, so the Board will not offer retraining to you. For example, some workers have too much of a permanent disability to ever be able to work again.
- when, even after retraining, you are not capable of earning what you made prior to your accident.

There are two small supplements: the first is an amount up to the current Old Age Security amount (at the maximum). If you are eligible for the first small supplement, you automatically qualify for the second small supplement (maximum \$200). The combined amount of your pension, any earnings and the two small supplements can not exceed 90% of the net pre-injury earnings (75% of the gross pre-injury earnings if your injury was before April 1, 1985).

The first small supplement is payable until you become eligible for Old Age Security (usually at age 65). It then stops and OAS starts to pay you (so you continue to get the same amount per month). The second small supplement continues to be paid until you die.

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