



Policy 04-04, Part II, Application 5 – pension midpointing

Background

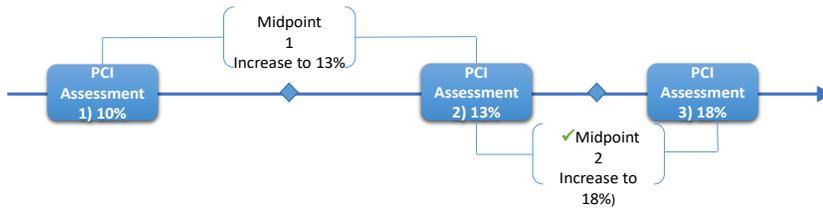
Policy 04-04, Part II, Application 5, provides the policy direction for permanent disability awards (pensions) for pre-1995 claims.

Question 7 addresses the process when a new permanent clinical impairment (PCI) assessment indicates a change in disability. Each assessment provides the most up to date evaluation of a worker's clinical impairment at that point in time. Current policy provides that, when there has been a deterioration in the worker's condition, the PCI change (and resulting pension adjustment) is effective at the midpoint between the initial assessment and the current assessment confirming the deterioration.

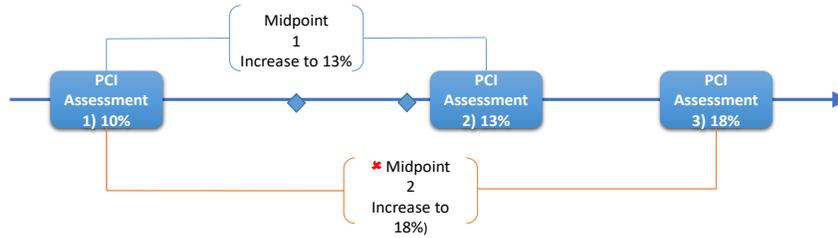
The current policy on midpointing is a legacy policy that has been in effect since at least 1985. With the passage of time, some workers have had successive PCI assessments and adjustments to their pensions, so that midpointing between the initial and current assessments no longer makes sense. It can have the unintended consequence of setting an effective date for the adjustment that is actually earlier than the last assessment.

WCB's approach has been to follow the intent of the policy by midpointing between the last assessment and the current one, which produces the most reasonable and fair outcome. The proposed policy changes confirm this practice and will ensure that the policy language reflects the intent.

✓ **Correct Mid Point Process:** Each midpoint is between the previous and the latest assessment.



* **Incorrect Mid Point Process:** The second midpoint is between the first and the latest assessment.



We welcome your feedback.

This posting will be open until **December 1, 2020**. Review draft policy.

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BoD Resolution 2017/08/32

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1. *What is a Permanent Disability Award, and who is eligible for it?*

A permanent disability award is a pension which includes compensation for permanent clinical impairment and assumed permanent loss of earning capacity resulting from the clinical impairment.

The pension is based on a medical determination of the extent of the compensable clinical impairment. WCB uses the WCB-approved rating schedule (see Appendix D) as a guide to determine the extent to which the compensable clinical impairment impairs or may impair earning capacity, and expresses that impairment as a percentage of disability.

Workers are eligible for a permanent disability award when they have a permanent clinical impairment due to a compensable accident which occurred on or before December 31, 1994.

2. *How is the pension amount determined?*

The pension is calculated as a proportion of permanent total disability. The pension for permanent total disability is based on 90% of the worker's annual net earnings at the time of the accident, calculated in accordance with the *WCA* and *WC Regulation*. Partial permanent disability pensions are a proportion of that amount, based on the degree of disability. For example, a worker with a permanent partial disability of 20% would receive a pension equal to 20% of 90% of annual net earnings.

The pension is subject to minimum and maximum amounts, as ordered by the *WCA* and the Board of Directors. Pensions may be adjusted by cost-of-living increases, as set out in the *WCA* or ordered by the Board of Directors.

(See Appendix F for minimum amounts for permanent total disability, maximum annual compensable earnings, and cost-of-living increases in effect since January 1, 1982).

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3. *At what stage in the worker's recovery is the pension determined?* WCB usually waits until medical opinion confirms the injury has stabilized with no further recovery expected, before assessing the permanent disability. When the injury is a deteriorating condition (for example, a progressive occupational disease), WCB may reassess several times as the condition deteriorates, and adjust the pension accordingly.
4. *How long is the pension paid?* The pension is paid for the worker's lifetime. WCB may increase or decrease the pension amount if there is a change in the degree of disability.
- The pension may be reduced or discontinued if WCB discovers part or all of the pension was obtained by fraudulent means (see Policy 01-08, *New Evidence*).
5. *What if the worker's actual impairment of earning capacity is greater than the pension?* If the worker's actual loss of earning capacity due to compensable permanent work restrictions exceeds the value of the permanent disability award, the worker may be eligible for an earnings loss supplement, under s.66 (see sidebar) of the WCA (see Application 6).
- Sections 65 and 66 of the WCA were repealed effective September 1, 2018; however, supplements paid under sections 65 and 66 for pre-1995 accidents are not affected by the repeal of the sections.* Prior to 1995, some workers were awarded a supplement under s.65 (formerly s.59) of the WCA (see sidebar). The applicable policy in effect at the time was Policy ADJ-30, Supplements Respecting a Pre-existing Condition, which set out the criteria and calculation for the supplement.
- The Board of Directors rescinded Policy ADJ-30 effective January 1, 1995. At the same time, the Board of Directors directed that all s.59 supplements in effect as of January 1, 1995 would continue to be adjudicated according to the provisions set out in the February 23, 1987, issue of Policy ADJ-30. A copy of the February 23, 1987 issue of Policy ADJ-30 is included in Appendix H of this manual.

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6. *What if the worker has permanent work restrictions, but does not have a measurable permanent clinical impairment?*

Workers with permanent work restrictions who, because they do not have a permanent clinical impairment, do not qualify for a permanent disability award may be eligible for an earnings loss supplement (see Application 6).

7. *How does WCB adjust the award if the worker's clinical impairment changes over time?*

The permanent disability award may be revised if, on further examination, it is determined that the worker's degree of clinical impairment is different from that previously assessed.

If it is evident the **initial-previous** assessment was incorrect, or there has been an unanticipated gradual improvement in the worker's physical condition, Policy 01-08, *New Evidence*, will apply when determining the date of the adjustment.

If it appears the **initial-previous** assessment was correct but the disability has since increased, WCB will assume the increase was a gradual, even progression **since the last assessment**, unless the contrary is shown. The increased pension award will be effective the mid-point between the date of the **initial-last** assessment and the date of the examination which confirmed the increased disability.*

* This method does not apply to claims for chest conditions resulting from accidents prior to January 1, 1979.

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8. What special provisions are there for claims occurring prior to April 1, 1975?

Section 58 of the WCA was repealed effective September 1, 2018; however, supplements paid under s.58 for pre-April 1, 1975, accidents are not affected by the repeal of the section.

If a worker:

- a) is receiving compensation for a permanent disability resulting from an accident prior to April 1, 1975, and
- b) the aggregate degree of permanent disability resulting from the pre-April 1, 1975 accident(s) is at least 50% of total,

WCB will pay an additional supplement calculated in accordance with s.58 of the WCA (see sidebar), until the worker reaches age 65.

9. What are the limitations when a worker is entitled to more than one permanent disability award?

Accidents on or before June 30, 1976

If a worker is entitled to receive more than one permanent disability award and the cumulative percentage exceeds 100% (total disability), the compensation paid will depend on the dates of accident.

The legislation in force prior to July 1, 1976, prohibited WCB from paying compensation for the portion of the cumulative percentage that exceeds 100%.

If **all** the claims involved occurred prior to July 1, 1976, compensation for the claim that puts the cumulative total over 100% will be calculated as 100%, minus either:

- a) the dollar amount of the earlier award(s), or
- b) the percentage of the earlier award(s),

whichever gives the greater benefit to the worker.

Accidents on or after July 1, 1976

If **all** the claims involved occurred on or after July 1, 1976, compensation is based on the full percentage value of the combined awards, with no reduction.

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*Combination of pre
and post-July 1, 1976
accidents*

If the claims are a combination of pre-July 1, 1976, and post-June 30, 1976, claims, compensation is based on the full percentage value of the combined awards, with no reduction.

10. When is this policy application effective?

This policy application (Application 5 – Injuries Prior to January 1, 1995) is effective January 1, 2018, except when noted otherwise in a specific policy section(s).

Previous versions

- [Policy 0404 Part II, Application 5 - April 2018](#)
- [Policy 0404 Part II, Application 5 - January 2018](#)
- [Policy 0404 Part II, Application 4 - August 2015](#)
- [Policy 0404 Part II, Application 4 - June 2014](#)
- [Policy 0404 Part II, Application 4 - June 2006](#)
- [Policy 0404 Part II, Application 4 - January 2004](#)
- [Policy 0404 Part II, Application 4 - June 2003](#)
- [Policy 0404 Part II, Application 4 - January 2002](#)
- [Policy 0404 Part II, Application 4 - October 2001](#)
- [Policy 0404 Part II, Application 4 - June 2001](#)
- [Policy 0404 Part II, Application 4 - August 2000](#)
- [Policy 0404 Part II, Application 4 - September 1999](#)
- [Policy 0404 Part II, Application 4 \(consolidated manual 1st Issue\) - February 1997](#)

