

International Brotherhood of

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Regarding: Worker's Compensation System Review 2019

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Overview

Our submission will focus on claim suppression, access to vocational rehabilitation benefits, loss of earnings assessments, and age of retirement.

By way of background, the Lodge represents journeymen involved in the construction, industrial, and commercial sectors of the British Columbia labour force. Generally, members are responsible for fabricating, constructing, installing, assembling, repairing, and maintaining a wide variety of structures, boilers, and pressure vessels made out of metals, fiberglass, and other materials.

According to the National Occupational Classification ("NOC") 2011, Boilermakers fabricate, assemble, erect, test, maintain and repair boilers, vessels, tanks, towers, heat exchangers and other heavy-metal structures. They are employed in boiler fabrication, manufacturing, shipbuilding, construction, electric power generation and similar industrial establishments.

The primary duties of Boilermakers are as follows:

- Read blueprints or specifications to plan sequence of operation
- Lay out plate, sheet steel or other heavy metal and mark bending and cutting lines on work piece using protractors, compasses and drawing instruments or templates
- Set up and operate heavy-metal working machines such as brakes, rolls, shears, flame cutters and drill presses to cut, shape and form metal into parts or sections
- Fit and weld metal parts or sections together to fabricate boilers, vessels, tanks, heat exchangers, piping and other heavy-metal products
- Erect and install boilers and other heavy-metal products according to specifications using hand and power tools
- Repair and perform maintenance work on boilers and other heavy-metal products
- Direct activities of hoist or crane operators and other workers during fabrication, assembly, installation or repair of structures
- Test finished structures using a variety of methods.

The work of Boilermakers includes significant exposure to environmental hazards. The NOC career handbook 2006 details significant hazards including the following:

- noise exposure;
- injury due to equipment, machinery, and tools;
- exposure to fire, steam, and hot surfaces; and
- work in dangerous location;

In addition to these environmental exposures, Boilermakers have a history of exposure to asbestos and regularly report exposure related claims many years after the last date of exposure.

Boilermakers must continually train for safety in the workplace due to the possibility of exposure to hazardous materials, gases, and other safety factors. Errors in judgment or in practical application of trade knowledge can be extremely costly, both in terms of injury to works and damage to equipment or materials. Attention to the application of safety and accident prevention are a must.

For the rest of this submission the Lodge intends to rely upon the experience of specific members to illustrate its position.

Claim Suppression

The Lodge's primary concern is that many employers coerce employees not to file claims when injured. This coercion can be direct through personal appeal, promises, favorable treatment, or threat. In the case of ██████████, his employer advised him that they could take care of him and that it could not guarantee this would be the case if he filed a WCB claim. When he was being taken for a medical appointment following his workplace injury the employer's Occupational Health and Safety advisor encouraged him to return to a work camp room and be examined by a first aid attendant the next day instead of seeing a doctor. When he agreed to do so the OHS advisor acted extremely friendly and promised him that the employer would do right by him. When the first aid attendant advised that he needed to be seen by a physician, the OHS advisor changed her tune and became adversarial towards the worker.

In the case of ██████████, he suffered an overuse injury by having to fabricate faster than he was capable of safely doing. As a result he suffered a bilaterally carpal tunnel condition. When he reported the incident to his employer, he was apologized to and advised that the employer would take care of him. When he filed a claim, the employer immediately protested on the basis that he injured himself playing sports. The frivolous protest resulted in a prolonged appeal that also meant ██████████ was both personally and financially impacted.

This coercion can also be indirect through the promise of additional benefits for an entire workforce if there are no injuries over a certain period of time. It is not uncommon for our members to be advised that if the worksite goes a certain period of time without a reported claim that all members would be entitled to a bonus of some kind. This creates a context of claim suppression enforced not through management but through peer pressure. As ██████████ stated, the use of this makes you feel like ██████████ because you are letting everyone else down.

Section 177 of the *Workers Compensation Act (WCA)* sets out that an employer or supervisor must not, threaten, promise, induce, persuade, discourage, impede or dissuade a worker of the employer from reporting to the board an injury, illness, death, or hazardous condition.

Section 213 of the *WCA* sets out that when a person contravenes a provision of Part 3 he commits an offense. However, it is well known that the Board takes limited enforcement in this respect. Further, the Board takes no action in respect of structural aspects such as through inducement through peer pressure. In addition, the impact of employer premium rates being affected by workplace injuries creates a perverse incentive for employers to coerce employees into either not filing a claim, or by limiting claim costs by providing meaningless work through a suspect return to work program. It creates an adversarial system

where prevention is not intended to reduce claims, but rather the reporting of claims. The system itself facilitates the motivation for these kinds of employer actions.

The Position of the Boilermakers is that additional administrative penalties and absolute liability provisions need to be included in the Act to actually prevent claim suppression. Unless the WCA has strong enforcement language workers will remain vulnerable to claim suppression. Ratings need to be changed so that employers are not incentivized to suppress claims.

Vocational Rehabilitation

Access to meaningful and appropriate vocational rehabilitation benefits is a primary concern for the Lodge.

However, too often the extent and nature of the benefits provided by the Board are driven by Board Medical Advisors ("BMA"), and not by treating medical and paramedical professionals. Allowing BMAs to dictate whether a worker is capable of modified duties or a return to work when the treating physician disagrees which places workers in a vulnerable position, reduces trust in the Board, and ultimately does not result in productive and positive outcomes.

██████████, a lifelong Boilermaker, suffered through a knee injury at work. He was pushed by a case manager to return to work on light duties when his family physician advised against it. He describes the situation as disheartening. Even after getting two doctor letters and a letter from his surgeon detailing that it was premature for him to return to work, the Board still tried to cut off his benefits. He describes being demoralized by the process. It left him frustrated and it impacted both his life at home and at work. It was only during a debridement when additional medical damage was noted that appropriate benefits were provided.

In adjudicating benefits, it is the Lodge's position that additional consideration needs to be given to the interests of the injured worker. This accords to a worker-centric approach to benefit entitlement. Too often the values and interests of the injured worker are set aside. Instead the Board focuses on quick inexpensive vocational rehabilitation that does not deliver long term results.

The Lodge believes that in order to address the issue of appropriate vocational rehabilitation benefits that the language of the Act needs to change to specifically address the inclusion of treating professionals in the adjudication of vocational rehabilitation benefits. This is particularly relevant for Section 16 benefits where the impact of benefit entitlement has immediate consequences for the healthy return of the worker to employment.

██████████ is a member who experienced such a situation. He was seriously injured and unable to return to his former employment. He put forward several suitable options but each time was denied those retraining options on account of length of time for retraining. He described the situation as being one where you constantly get the run around. He felt shot down and that the lack of consultation of both himself and his physician delayed his return to work and made it difficult to re-train.

The Lodge supports a change in the legislation that enforces a worker-centric approach to benefit entitlement. The Lodge further supports a change to Section 16 that would make it a requirement to consult with a worker's physician on limitations and restrictions as they relate to Vocational Rehabilitation benefits.

Loss of Earnings

The language in section 23(3.1) entitles permanently disabled workers to a loss of earnings award only when the combined effect of the worker's occupation at the time of the injury and the worker's disability resulting from the injury is so exceptional that an amount determined under subsection (1) does not appropriately compensate the worker for the injury.

The "so exceptional" test creates an unfairness by which permanently disabled workers are judged. The Lodge's position is that this test needs to be tempered to allow for a fairer process to assess entitlement to a loss of earnings award. The Lodge would support a change that takes into consideration the merits of the case.

Age of retirement

The general age of retirement for payment for total of partial disability benefits under Section 23.1 is age 65. It is a simple fact that a large percentage of workers are employed well beyond age 65. The lack of income security means that workers are often working into their 70s. Moreover, many workers are put well behind their original earnings potential after an injury, and should be compensated for that loss when translated into long term investments.

The Lodge's position is that the system should be reverted back to a pension for life. There are reasonable methods to account for and cost this expense. For instance some offsets against OAS and CPP could be considered. Similarly if an individual has an employer sponsored pension this may be taken into consideration as well. The important aspect here is that income security is maintained for injured workers. There is a basic moral responsibility for ensuring this take place.

Conclusion

The Boilermakers Lodge 359 appreciates the opportunity to provide submissions on revisions to the *Workers Compensation Act*. It is time to make the *WCA* a worker-centric piece of legislation. We hope that these submissions will assist in that process.

With Regards



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