



Workplace Safety &  
Insurance Board

Commission de la sécurité  
professionnelle et de l'assurance  
contre les accidents du travail

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July 17, 2007

Mr. Gary Majesky  
International Brotherhood of Electrical Workers  
1377 Lawrence Ave. E  
TORONTO ON M3A 3P8

Dear Mr. Majesky:

Thank you for your letter dated July 5, 2007 with respect to the reporting of a material change in circumstances where a worker's future economic loss (FEL) or loss of earnings (LOE) benefit cannot be reviewed. You pose a number of questions that I will address.

There are two issues I would like to comment on before responding to your questions. The first is the understanding of what a material change in circumstances is. Operational Policy manual (OPM) document #22-01-02 "Material Change in Circumstances - Worker" clearly shows the various types of material changes on pages two and three. You will note that earnings are just one of those listed. It is important to understand that neither the *Workplace Safety and Insurance Act* (WSI Act), nor the above noted policy, absolve workers from reporting earnings changes at any time. As a practical matter, there may be circumstances where the reporting of earnings changes would be of limited value, such as where the WSI Act does not allow for a review, but these are still technically reportable.

The second issue relates to the recent changes to the WSI Act as per Bill 187. Effective July 1, 2007, there are now more opportunities for the Workplace Safety and Insurance Board to review a worker's FEL or LOE benefits subsequent to the original "lock-in" at 60 months post FEL-determination or 72 months post injury, as the case may be. Where a new review opportunity exists, consideration of wage loss entitlement on a retroactive basis may very well be affected by reported or non-reported material changes through part of the period the benefit was previously not reviewable. In essence, as legislative changes broaden the opportunity to again review wage loss benefits, there is probably more of a need to report any and all material change in circumstances regardless of whether the lock-in has taken place. And now to answer your questions:

**Q1. Does the Material Change obligation apply to workers who are in receipt of full FEL or LOE benefits, even though these benefits have been locked-in under the WCA or WSIA?**

A. As noted above, a worker does have an obligation to report any material change in circumstances including earnings matters despite a locked-in benefit. Once reported, a decision-maker may not be able to affect that locked-in benefit, and may ultimately advise the worker not to report further earnings changes, but the initial reporting requirement does exist.

**Q2. If a worker is in receipt of full FEL or LOE benefits, but later on returns to the labour force in some remunerative capacity, either part or full-time. Is there any mechanism under the Workplace Safety and Insurance Act or Board policy to offset these earnings once a worker's FEL or LOE benefits have been locked-in?**

A. Based on recent changes to the *Workplace Safety and Insurance Act* by Bill 187, a worker may experience a significant deterioration in his/her condition and a review of either the FEL or LOE benefit will be permitted. It is then possible that a prior material change in circumstances may affect that review.

**Q3. Does policy 18-03-06 now provide a mechanism to conduct LOE reviews beyond the 72-month lock-in?**

A. Yes the Final LOE Benefit Review policy (18-03-06), based on changes introduced by Bill 187, allows for the review of LOE benefits beyond the 72 month point, where a worker suffers a significant deterioration, even on a temporary basis.

**Q4. If a worker whose LOE benefits are locked-in at 72 months and later reports a material change regarding a return to work in some remunerative capacity, are the worker's LOE benefits adjusted or off-set based on these earnings?**

A. In the absence of a significant deterioration, the lock-in remains in effect and no adjustment would take place. Should the worker experience a significant deterioration, as per Q3, then the review opportunity would present itself. Generally the entitlement period open to review would begin from the point of the significant deterioration, so it is possible that the worker may not be working at that point. If there are no earnings at the point of the significant deterioration, then the worker would be eligible for full benefits. The worker's ability to return to the workforce will then be considered based on his/her functional abilities and the LOE benefits will reflect ongoing activity including the provision of an LMR plan.

**Q5. If a worker whose LOE benefits are locked-in at 72 months and they subsequently return to work in some remunerative capacity, but fail to report a material change or late in making the declaration ( beyond 10 days). Are the worker's LOE benefits adjusted based on these earnings?**

A. Once the lock-in takes place, LOE benefits are not adjusted unless a material change in circumstances that occurred prior to the lock-in was not reported. However, where there is a significant deterioration in the future, LOE benefits may again be reviewed as per the answer to Q4.

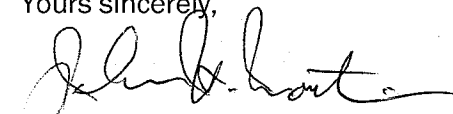
**Q6. If a worker whose LOE benefits are locked in at 72 months and they subsequently experience a change in their earnings, either higher or lower, does Policy 18-03-06 provide a mechanism for the Board to revise the worker's LOE benefits either upward or downward?**

A. What policy 18-03-06 provides for is the further review of LOE benefits based on a significant deterioration after the 72 month lock-in. The changes introduced by Bill 187 open up the previously limited review scheme. Now a worker's LOE benefits can be adjusted to reflect an increased loss of earnings due to a recurrence or need for further treatment without waiting for a NEL redetermination and increased NEL benefit.

Generally the same provisions that apply to LOE benefits will also apply to FEL benefits.

I hope this response will be of assistance in understanding the recent legislative and policy changes.

Yours sincerely,



John H. Martin  
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