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Briefs

Submission to the WCB on Permanent Psychological Disability Benefits Policy Review Consultation

A pdf of the complete submission can be found here(172 KB).

The BC Federation of Labour (“Federation” “BCFED”) appreciates the opportunity to provide a submission on the current Permanent Disability Benefits Policy Review.

The Federation represents more than 500,000 members of our affiliated unions, from more than 1,100 locals, working in every aspect of the BC economy. The Federation is recognized by the Workers’ Compensation Board (“WCB”) and the government as a major stakeholder in advocating for the health and safety of all workers in BC and full compensation for injured workers and their surviving dependents.

This submission was prepared in consultation with our affiliates.

For many years, the BCFED and our affiliated unions have had concerns about the referral of psychological injuries to the Psychological Disability Awards Committee (“PDAC”). We have questioned the ability of the PDAC to provide appropriate psychological impairment assessments. Indeed, both judicial review and Workers’ Compensation Appeal Tribunal (‘WCAT”) decisions have made it clear the current policy inappropriately places the PDAC in the role of “expert.” In Bagri v.

Workers' Compensation Appeal Tribunal, 2009 BCSC300, it was found that the PDAC is an adjudicative body, not an expert body, for the rating of psychological permanent partial disabilities.

The PDAC assessments were often overturned when expert evidence and other factual information were presented.

Currently the WCB policy requires the PDAC's assessment to be considered by the adjudicators along with expert evidence, resulting in:

- Workers' level of impairment consistently under-rated by the PDAC;
- Decisions about impairment ratings not supported by adequate reasons, and sometimes with no reasons provided at all;
- The PDAC assessments were often overturned when expert evidence and other factual information were presented;
- Workers required to go through a lengthy appeal process to get fair compensation; and
- These complicated processes for assessment of psychological injuries create barriers that make it more difficult to get a claim accepted. The same processes are not required for workers who file claims for physical injuries.

The Permanent Psychological Disability Benefits ("PPDB") Policy Review discussion paper offers two options. Option 1 proposes to maintain the current policy to allow for unique procedures for assessing PPDB. And Option 2 proposes to amend the policy to no longer contain specific procedures for the assessment of PPDB including referral to the PDAC. And it would allow Long Term Disability Services ('LTDS") the flexibility to develop new processes for the assessment of PPDB and to implement operational changes to better serve stakeholders.

The BCFED believes retaining the status quo allows injured workers to be treated unfairly and this is simply not acceptable. We therefore support the policy amendments proposed in Option 2.

We strongly support the removal of the PDAC from the assessment of PPDB. We support continuing the use of external service providers or "experts" for assessing an injured worker's psychological impairment.

The BCFED is concerned with the proposed amendment to allow the LTDS more flexibility to implement “operational changes” to the existing system. It is encouraging to see the WCB acknowledging the “unique and complex nature of permanent psychological conditions, the merits and justice of each case and the individual circumstances.” This is an opportunity to implement a system that is built on the “worker centred approach” -- a system that truly considers the individual circumstances of these injured workers.

The BCFED opines achieving a successful and lasting system can best be accomplished with meaningful consultation with worker advocates and representatives. We therefore urge the WCB Board of Directors to ensure consultation with worker representatives in the development of new processes for the assessment of permanent psychological disability benefits and the implementation of necessary operational changes. The BCFED also urges the WCB Board of Directors ensure the necessary resources are provided to ensure successful implementation of the proposed changes.