



Annual Report - WorkSafe BC Fire Fighter Issue Committee

May 2008

The following is a compilation of all recorded questions received by FCABC members complete with answers provided by WorkSafe BC.

For the calendar year 2007 and partial 2008.

Many fire departments allow their firefighters to play some form of a "team sport" while working, for physical fitness reasons. I have been informed that any firefighter that was hurt while doing so on company time may not (or would not) be covered by WCB.

As you know, for compensation to be provided, we would have to determine that the injury was work-related - that it arose out of and in the course of employment. Generally, participation in exercise or sports activities or physical exercises is not normally considered to be part of the worker's employment. There are, however, exceptional cases where these types of activities may be covered such as when the circumstances are such that a particular activity can be said to be part of a worker's employment. In assessing these cases, the following factors are also considered in determining whether an injury is compensable:

1. whether the activities were part of the worker's job;
2. whether the worker was instructed or directed by the employer to carry out/participate in the activity;
3. whether the exercise or sport activity occurs during normal working hours;
4. whether the worker was paid full salary or other consideration while participating in the activity;
5. whether the activity is supervised by a representative of the employer having supervisory authority;
6. whether physical fitness is a required in order to perform the job (e.g., muscle strength or aerobic capacity);
7. whether the intent of the activity is to foster good relations with the public or a section of the public with which the worker deals;
8. whether the activity takes place on the employer's premises.

This list is not exhaustive. All relevant factors would be considered and no single factor is regarded as conclusive. So, depending on the facts of the case, a worker who is involved in exercise or sports activities may or may not be covered - not necessary a helpful answer I know.

as long as the activity is done during work hours, is recognized as part of the employee's duties and is supervised, there shouldn't be a problem.

Given the information provided, I would say the situation favoured coverage - that the worker's injury in this scenario would be accepted as work-related. The key elements in this situation are as follows:

- * Fitness is a job requirement - as such the aerobic activity of the basketball game is consistent with the employer's requirements/expectations
- * The activity/game took place during normal working hours
- * The workers continued to receive remuneration during the activity
- * The game was supervised by the employer (Captain was participating)

The fact that the game was off-site (at a local gym) is less of an issue because it was supervised by the employer. If the employer was not directly participating/supervising it may have been more of an issue.

With the recent "dust up" between Vancouver Police and firefighters the question has been asked, "If fire crews assist police in potentially violent situations will they be covered by WorkSafe".

There are a number of policies that are helpful in making this determination.

For compensation to be provided, we have to determine that the injury was work-related, that it arose out of and in the course of employment or is due to the nature of employment. We would be guided by Policy item #14.00 Arising Out Of And In The Course Of Employment (see attached link)

http://www.worksafebc.com/publications/policy_manuals/Rehabilitation_Services_and_Claims_Manual/volume_II/assets/pdf/rscm_volume_ii.pdf

The policy lists a number of factors that are considered. These include:

- a. whether the injury occurred on the premises of the employer;
- b. whether it occurred in the process of doing something for the benefit of the employer;
- c. whether it occurred in the course of action taken in response to instructions from the employer;
- d. whether it occurred in the course of using equipment or materials supplied by the employer;
- e. whether it occurred in the course of receiving payment or other consideration from the employer;

- f. whether the risk to which the employee was exposed was the same as the risk to which the employee is exposed in the normal course of production;
- g. whether the injury occurred during a time period for which the employee was being paid;
- h. whether the injury was caused by some activity of the employer or of a fellow employee.
- i. whether the injury occurred while the worker was performing activities that were part of the regular job duties; and
- j. whether the injury occurred while the worker was being supervised by the employer.

This list is not exhaustive. All of these factors can be considered in making a judgment, but no one of them can be used as an exclusive test for deciding whether an injury arose out of and in the course of employment. So, depending on the facts of the case, a worker may or may not be covered. Generally, the more these factors are present in a situation, the greater the likelihood that coverage would be favoured.

In addition, there are two policies that may apply and they relate to a worker forced to act because of some emergency:

1. Policy item #16.40, Injury While Doing Another Person's Job (see attached link) provides that where a worker is injured as a result of performing an act for the purpose of the employer's business, even if not specifically authorized by the employer, the claim would be accepted. For example a worker would be covered if s/he were injured as a result of an emergency action to rescue a fellow worker. However, if an act is specifically prohibited by an employer or is known, or should reasonably have been known to the worker to be unauthorized, or if the worker had been previously warned against doing another person's job, the worker would not likely be covered even if the action was for the benefit of the employer. The exception would be if the employer had previously condoned a prohibited practice carried out by employees or some emergency forced a worker to act.

http://www.worksafebc.com/publications/policy_manuals/Rehabilitation_Services_and_Claims_Manual/volume_II/assets/pdf/rscm_volume_ii.pdf

2. Policy item #16.50, Emergency Actions, (see attached link) provides that where an emergency occurs at a time when a worker is in the course of employment, the worker is considered to be covered if injured when action to protect a fellow worker or protect the employer's property. However, if the action is that of a public spirited citizen, then it would not be considered to be related to employment because s/he would be doing no more than anyone would do.

http://www.worksafebc.com/publications/policy_manuals/Rehabilitation_Services_and_Claims_Manual/volume_II/assets/pdf/rscm_volume_ii.pdf

It may be argued that firefighters and police officers in their role as “first response” workers to accidents/emergency situations may be expected to assist each other in a way that would be more connected to their employment than other types of workers.

It would be helpful in adjudicating this type of claim to know if there was any type of direction or protocol that has been put in place by the employer (prior to the actual event) that would apply to this type of situation. For example, are there any documents/directions which outline the roles and responsibilities of emergency workers—police, firefighters, and/or paramedics who attend the scene of an emergency or accident? Is there an expectation that firefighters would assist a police officer in situations that are potentially violent? If there was direction or an expectation that firefighters would assist a police officer in a potentially violent situation, this would favour coverage.

Our member departments have struggled for some time now with the provision of resources for traffic control at motor vehicle incidents. The challenge has been with where the fire department's responsibility starts and stops with regard to the provision of these resources.

Traffic control is supposedly the responsibility of the Highway Maintenance Contractor as stated in the B.C. Ministry of Transportation Maintenance Specification 7-780 3.1 a) and 7-780 3.1.1 a). The problem is though that in reality, the highways maintenance contractors are not aware of this specification and it takes them time to muster up a crew and get to the scene so the fire department if they are on scene, usually do the job more as a duty of care obligation

We are obliged to provide traffic control for the safety of our workers as part of the WorkSafe BC regulation. The question remains, are we obliged to provide traffic control for the public?

Section 115 of our Act, which speaks to the general duties of employers, states that the employer must ensure the health and safety of all their own workers, and "any other workers present at the workplace where the work is being carried out."

So, while Fire Departments may not have obligations to the public, they would have obligations to the other rescue personnel who might show up.

Our sense is that there is not anything in our legislation requiring the employer to protect the public in this situation. However, we do recognize that section 116 (general duties of workers) does state that workers must take reasonable care to

protect their own health and safety, "and the health and safety of other persons who may be affected by the worker's acts or omissions at work."

The Policy and Research Division ("PRD") would like to thank all participating stakeholders for their submissions on the "Coverage of Volunteer Firefighters" policy proposals. Please see the attached document for a summary of stakeholder comments.

On July 17, 2007, the Board of Directors ("BOD") approved policy changes to policy item #7.10 in Volume II of the Rehabilitation Services & Claims Manual ("RS&CM") to reflect current practice and policy clarification.

The policy amendments take effect on October 1, 2007 and apply to all decisions on or after October 1, 2007.

Some of our member departments have been working diligently to have their members certified for Emergency Scene Traffic Control. After a review of the requirements of employers regarding this training, it appears there are no certified programs for this. We are aware of the BC Safety Council course and have been told that it is recognized by WorkSafe as meeting the training requirement for Emergency Scene Traffic Control.

The questions we have are: Are there any courses that are acceptable to WorkSafe that are considered as meeting the employer's training requirement? Is it acceptable to WorkSafe BC for the employer to train members to the MOT standard for these operations?

We would like to provide our members with all possible options for the acceptable delivery of this training.

There is no requirement for low/moderate or emergency scene traffic control courses to be submitted to WorkSafeBC for acceptance. Nor is there a requirement for all fire departments to have their members take a prescribed course.

That said, Section 18.4(1)(c) of the OHS Regulation ("Regulation") requires that "A person assigned to be a traffic control person is adequately trained in a manner acceptable to the Board and effectively performs their role in the traffic control arrangements and procedures for the work."

The training a traffic control person ("TCP") requires depends on the circumstances the TCP is expected to experience at his/her workplace. Employers are expected to perform a job task analysis to determine the tasks, and associated risks, to be conducted by the TCP and train

workers accordingly. The training content and delivery method should be designed according to the Occupational Health and Safety Regulation Part 18 guideline recommendations.

The link below sets out the elements to be considered in a job task analysis and #3 of the Guideline specifically addresses emergency scene traffic control.

<http://www2.worksafebc.com/publications/OHSRegulation/GuidelinePart18.asp>

The following policy change was implemented as a result of various stakeholders, including the FCABC providing input on behalf of its members.

2007/07/17-07

**THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA
RESOLUTION OF THE BOARD OF DIRECTORS**

RE: Volunteer Members of Fire Brigades

WHEREAS:

Pursuant to section 82 of the Workers Compensation Act, RSBC 1996, Chapter 492 and amendments thereto ("Act"), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

The definition of "worker" under section 1 of the Act includes a member of a fire brigade ("volunteer firefighter") working with or without remuneration when serving a municipality, a regional district, an urban area, an improvement district or other form of local government;

AND WHEREAS:

Policy item #7.10 of the Rehabilitation Services and Claims Manual ("RS&CM") provides guidance on coverage for volunteer firefighters;

AND WHEREAS:

The Volunteer Firefighters Association of British Columbia has requested that WorkSafeBC ("WCB") policy be reviewed to provide policy clarification on workers' compensation coverage for volunteer firefighters;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. Amendments to policy item #7.10 of the RS&CM, Volume II, attached to this Resolution as Appendix A, are approved and apply to all injuries on or after October 1, 2007.
2. This resolution is effective October 1, 2007.
3. This resolution constitutes a policy decision of the Board of Directors.

DATED at Richmond, British Columbia, July 17, 2007.
By the Workers' Compensation Board

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~~#7.10 Members of Fire Brigades~~ Coverage for Volunteer Firefighters

Individuals volunteering as a firefighter for a municipality or other form of local government are given coverage by the definition of "worker" under section 1 of the Act.

A volunteer firefighter may also include an individual at the scene of a fire, who is requested to assist by the Fire Chief, or authorized designate, and whose name is recorded. Only those individuals under the direction and control of the Fire Chief or authorized designate are covered.

~~A volunteer member of a fire brigade firefighter is~~ may be entitled to compensation for injuries or death arising out of and in the course of the activities of the fire brigadedepartment. This involves activities related to the process of firefighting even though not actually occurring while fighting a fire or during a drill or practice. It includes activities within the environs of the fire hall which are authorized and under the direction and control of the Fire Chief, such as activities involving maintenance to the building or equipment, snow clearance, etc. Coverage applies in the case of participation in practices, but not to travel to and from practices. However, there would be coverage in an actual emergency where the member is travelling to the firehall or the fire in response to the siren or returning home or to the member's regular job after the fire.

A. Travel

Volunteer firefighters are not covered for injuries or death which occurs while routinely commuting to and from the fire department.

A volunteer firefighter's travel may be considered part of his or her activities of the fire department when:

- in response to an emergency call out, the volunteer firefighter is directed by the Fire Chief or authorized designate, to travel to the fire hall, a fire or other site of emergency; and
- while returning to the volunteer's home or regular job after attending to the emergency duties, via the most direct route without departure for personal reasons.

If the volunteer firefighter's injury or death results primarily from the activity associated with the urgency of the preparation for travel, it may be considered to arise out of and in the course of the activities of the fire

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department, and therefore be compensable. This is an exception to the general rule that workers who are employed to travel are considered to be in the course of the employment only from the time the worker commences travel on the public roadway.

B. Emergency Response Duties

In addition to fighting fires, a volunteer firefighter's duties may also include responding to various emergency situations such as:

- facilitating evacuations;
- performing rescues;
- controlling hazardous substances;
- providing traffic control;
- disaster planning/response; and
- other related duties assigned by the Fire Chief or designate.

C. Participation in Practices and Drills

An injury or death that occurs during a volunteer firefighter's participation in practices or drills may be considered to arise out of and in the course of the activities of the fire department, if participation was undertaken at the direction of the Fire Chief or authorized designate, regardless of whether the practice or drill takes place at the fire hall or some off-site location.

Practices include training sessions that involve the teaching of vocational or practical skills specifically related to those used within the fire department, such as live firefighter training.

D. Other Employment Activities

i. Maintenance Duties

An injury or death that occurs during a volunteer firefighter's maintenance of the building or equipment within the environs of the fire hall may be considered to arise out of and in the course of the activities of the fire department, where the volunteer firefighter is authorized and under the direct supervision and control of the Fire Chief or authorized designate.

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ii. Public Relations Activities

An injury or death that occurs during a volunteer firefighter's participation in public relations activities may be considered to arise out of and in the course of the activities of the fire department.

Public relations activities may include participation in recruitment, charity drives and safety education.

Factors that may weigh in favour of coverage for injuries or death that occur during a volunteer firefighter's participation in public relations activities, include whether the participation:

- is for the benefit of the fire department;
- was undertaken at the direction of the Fire Chief or authorized designate;
- involved using equipment supplied by the fire department;
- was during a time when the fire department was operational; or
- was considered to be part of the volunteer firefighter's duties.

No single factor is determinative. The more tenuous the connection to the activities of the fire department, the less these factors favour coverage.

EFFECTIVE DATE: October 1, 2007

CROSS-REFERENCE: Policy items #14.00, Arising Out of and in the Course of Employment; #18.00, Travelling To and From Work; #20.00, Extra-Employment Activities; #20.20, Recreational, Exercise or Sports Activities; #20.30, Education or Training Courses and #20.50, Fund Raising, Charitable or Other Similar Activities

APPLICATION: Applies to all injuries on or after October 1, 2007.

Is there anything within Worksafe BC regulations on retirement ages for volunteer fire fighters or is that left to the individual departments?

Retirement age becomes an issue for WorkSafe BC when it comes to determining entitlement to benefits. We have some Q&A on this topic posted on our website (we were getting a lot of questions because of the amendments to the Human Rights Code).

<http://www.worksafebc.com/help/faqs/default.asp?section=All>

Benefits after age 65

Are workers employed past the age of 65 covered by workers' compensation?

Workers' compensation coverage extends to those employed past age 65. Universal coverage is a basic principle of workers' compensation law in B.C., and includes those who work past the standard retirement age of 65.

Must employers pay assessment premiums for workers employed past age 65?

Employers must pay assessment premiums for all workers, no matter their age.

Does a worker's age affect his/her entitlement to WorkSafeBC wage loss and/or permanent disability benefits?

The duration of temporary/permanent disability payments may be affected by a worker's age at the date of injury, where the date of injury is on or after June 30, 2002. Generally, entitlement to WorkSafeBC wage loss and pension benefits end when a worker reaches 65, or, where the worker is 63+ on the date of injury, two years after that date.

The legislation, however, lets WorkSafeBC pay benefits beyond age 65 where evidence verified by an independent source confirms a worker's intent to work past 65. Where WorkSafeBC is satisfied a worker would have continued working past 65 had the injury not occurred, wage loss payments may continue past that age until the date a WorkSafeBC officer has established as the worker's retirement date.

Section 23.1 of the *Workers Compensation Act* states if a worker is less than age 63 on the date of injury, wage loss and pension benefits continue until 65 or a later retirement date as established by WorkSafeBC. If a worker is 63+ on the date of injury, compensation continues for two years from that date or a later retirement date as established by WorkSafeBC. Entitlement to benefits ends if a

worker's disability resolves prior to age 65, or the expiration of the two-year period.

Please note that under the former provisions (legislative/policy provisions that applied to injuries that occurred prior to June 30, 2002) temporary disability benefits didn't stop at age 65, and certain permanent disability benefits continued for the worker's lifetime.

In light of the abolishment of mandatory retirement as of January 1, 2008, what's changed in terms of the duration of WorkSafeBC benefits?

The payment of WorkSafeBC benefits isn't affected by the abolishment of mandatory retirement. WorkSafeBC currently covers workers employed past age 65. Benefits may be paid to workers over 65 where sufficient evidence to establish the worker's intent to work past that age is established.

Why do different rules apply to the duration of compensation payments for workers age 63+?

Section 23.1 of the *Workers Compensation Act* recognizes 65 as the standard retirement age of workers in B.C. Statistics Canada data supports the general view that, on average, workers retire at or before age 65.

What evidence is considered when WorkSafeBC determines a worker would have retired after age 65?

Policy provides examples of evidence that may assist WorkSafeBC establish a retirement date for workers 63+ on the date of injury (RSCM Policy item #35.30, *Duration of Temporary Disability Benefits*; RSCM Policy item #41.00, *Duration of Permanent Disability Periodic Payments*), including:

- Name of employer worker intended to work for after age 65, description of type of employment to be performed, expected duration of employment
- Confirmation from employer he/she intended to employ worker after age 65
- Information from employers, unions, professional associations on normal retirement age for workers in a particular occupation
- Information from accident employer on whether worker was covered under a pension plan provided by the employer, terms of that plan
- Information from accident employer or union on whether a collective agreement was in place detailing normal retirement age
- Other relevant information may also be considered

What's a retirement benefit?

A retirement benefit is compensation set aside by WorkSafeBC for workers entitled to permanent disability benefits and is in addition to those permanent disability periodic payments. A worker may also choose to contribute some of his/her permanent disability periodic payments to the retirement benefit.

The retirement benefit is paid as a lump sum when periodic permanent disability benefits cease (age 65, or the retirement date determined by WorkSafeBC). If a worker dies before 65, the retirement benefit is paid to a named beneficiary/estate.

Retirement benefits are intended to compensate a worker for the impact the worker's permanent disabilities have on his/her ability to accumulate retirement savings (see section 23.2 of the *Workers Compensation Act*, and Chapter 18 of the RSCM for details on retirement benefits).

Regarding turnout gear; what standard will Work safe BC be enforcing on Protective Ensembles? There has been a recent change to NFPA 1851 (2007 Edition) Selection, Care and Maintenance of Protective Ensembles where they have added a mandatory retirement date of 10 years for all articles.

Jeff - thank you for your enquiry about standards for turnout gear. You asked whether WorkSafeBC will be enforcing a new specification in NFPA 1851. Section 10.1.2 of NFPA 1851 (2008 Edition) specifies that:

"Structural fire fighting ensembles and ensemble elements shall be retired in accordance with 10.2.1, no more than 10 years from the date the ensembles or ensemble elements were manufactured."

An explanatory note accompanies this specification in NFPA 1851, as follows:

"After discussion of the concept of mandatory retirement for protective elements, the consensus of the technical committee, led by the fire service segment, is that the life of a turnout suit is generally less than 10 years. Regardless of when the element was originally produced, it is imperative that the protective elements be routinely inspected to ensure that they are clean, well maintained, and still safe. Just knowing the age of the elements cannot do that."

the industry-specific health and safety regulatory requirements for firefighting in British Columbia are contained in Part 31 of the Occupational Health and Safety Regulation. Section 31.14, originally developed and published in 1998, requires that:

"31.14 Protective coats, pants and hoods

Firefighters required to approach the seat of a fire or enter a structure or other hazardous area during an incident must wear protective coats, pants and hoods meeting the requirements of

(a) NFPA 1971, Protective Clothing for Structural Fire Fighting, 1991 Edition, or

(b) CGSB Standard CAN/CGSB-155.1-M88, Firefighters' Protective Clothing for Protection Against Heat and Flame. "

As you can see, NFPA 1851 is not one of the standards specified in the regulation. For this reason, WorkSafeBC does not enforce to this standard, although the standard may be a standard acceptable to the Board.

OHS Regulation section 31.11(1) specifies that the employer must have written procedures for the inspection of protective clothing and equipment at regular intervals, and section 31.12 requires that firefighters ensure that personal protective clothing and equipment used by them is maintained in good condition. In reviewing NFPA 1851 (which was introduced after publication of all these OHS regulatory requirements), I see that it has significant information for inspection and criteria for repair/replacement of protective equipment. As such, it looks to be a good resource for development of the necessary written procedures.

Although Part 31 of the OH&S regulation is not currently under review for change by our Policy and Research Division, the Association can make a recommendation to that effect if you see a need.

The WorkSafe BC committee was also asked to provide input regarding an Industry Alert for the Fire Service. This input dealt with development of a message warning of the importance of rehabilitation as a result of a fire fighter fatality during a training session held in Comox.

Respectfully submitted,

Jeff Lambert
On behalf of
WorkSafeBC Firefighter Issues Committee

Committee Members

Chief Jeff Lambert, Port Moody Fire-Rescue

Chief Bill Wacey, BX Swan Lake

Chief Dave Balding, Malahat Fire Department.

