INTERVIEW QUESTIONS - WORKERS' COMPENSATION COMPENSATION SERVICES ISSUES

JURISDICTION: YUKON

I. COMPENSATION SERVICES ISSUES

1. Is there a requirement, statutory or otherwise, requiring the regular review and potential readjustment of the rate of temporary wage loss benefit paid to an injured worker?

   If yes, what is the basis for adjusting the temporary wage loss benefit (i.e., a different basis for calculating the rate; a change in circumstances or level of disability)? And, are there any statistics or data regarding how often the rate is adjusted down or up?

   There is no regular review for the purpose of adjusting the rate of temporary wage loss benefit.

   If the injured worker is a seasonal worker the temporary benefit could be reviewed for the purpose of making a more accurate determination of the worker's pre accident earnings.

   Board policy requires that a claim be reviewed every 30 days to determine if there is a possibility in applying "deeming". In practice, a claim is reviewed every 30 days, but an injured worker is not deemed until they have reached maximum medical improvement. In effect, the regular, periodic review is to determine whether the claimant has reached MMI.

2. Are permanent disability awards, both partial and total, subject to review and readjustment? For example, is there a requirement, statutory or otherwise, requiring the regular review and potential readjustment of the rate of permanent disability award?

   If yes, what is the basis for adjusting the award (i.e., a different basis for calculating the rate; a change in circumstances or level of disability)? And, are there any statistics or data regarding how often the rate is adjusted down or up?

   See above.

   There is no requirement, statutory or otherwise to review and adjust the permanent impairment award assessed at the time of reaching MMI. However, if the condition worsens the rate may be readjusted at the request of the injured worker.
3. **Is there any prohibition in the workers' compensation legislation in your jurisdiction against "topping up" (i.e. purchasing private disability insurance which provides income in addition to workers' compensation payment??)**

   No prohibition against topping up by an employer (the WCB is first payor, and does not inquire into other sources of compensation available to a worker following a compensable work injury).

4. **What factors, if any, other than earnings, are used to determine workers' compensation benefits (for example what impact does age, marital status, number of dependents, retirement, education and training have on the calculation of benefits)?**

   The WCB uses federal income tax information in establishing a claimant's annual net earnings and in this sense the fact that the worker may claim dependents under their T4 calculation will have an impact on their annual net earnings rate and consequently their rate of compensation.

5. **Is deeming used in either**

   1) **setting the duration of temporary benefits or**

   2) **as the basis for calculating permanent disability awards**

   *(where "deeming" means deeming a worker ready to return to work, and/or as capable of earning income at a particular income level, though the worker may not have actually returned to work or may be earning income at a lower level)?*  

   **And if yes, what are the prerequisites for applying deeming? And, are there any statistics or data regarding the frequency with which deeming is used?**

   When a worker reaches MMI, and they are at the end point of intervention by the board (i.e. finished any vocational rehabilitation), they will be assessed as to their "employability" and paid a wage loss benefit on the basis of this deemed "employability". (If the worker has a job, but has suffered a loss of earnings as a result of their injury they will be paid a wage loss supplement.)

   Though there are no statistics readily available, it is estimated that there are only about 25 to 30 people in the system who have been subject to deeming.

6. **Does the jurisdiction have an electronic claim files system in place? When was it introduced? What are the perceived advantages and disadvantages of electronic claims files?**

   There is no file imaging system in place in the Yukon. In 1992, the board adopted a electronic financial management and transactions system.
7. **Have any research or studies been undertaken on the adequacy of benefits provided by the jurisdiction? Any research or studies on the issue of equity of benefits? Are these studies available to the Royal Commission?**
   
   No studies have been undertaken on the adequacy and equity of the benefit rate in the Yukon.

8. **Claims Statistics:**
   
   In 1996, 1,211 claims were reported of which 501 were time loss claims.

II. **ADJUDICATION**

1. **How would you describe the basic approach to adjudication in your jurisdiction (for example, inquiry based approach or adversarial)?**
   
   An inquiry based approach.

2. **In your jurisdiction is the function of adjudicators, at the first stage, similar to an insurance adjuster?**
   
   The board has moved from a generalist to a specialist approach. The initial adjudicator assesses the case when it is reported to the board and streams it depending on the level of complexity of the case. Case managers work with rehabilitation counsellors to develop a return to work plan in the most complex cases.

3. **If new evidence is presented on a particular claim, is the claim sent back to the adjudicator for reconsideration?**
   
   Yes. If the case is subject to appeal the option is offered to allow the case to go back to the adjudicator.

4. **Are board policies binding on adjudicators? To what extent are adjudicators entitled to exercise discretion? Is discretion applied by an initial claims adjudicator reviewable?**
   
   Board policies are binding on adjudicators, but board policies tend to be fairly general providing for a degree of flexibility and discretion on the part of adjudicators.
What, if any, mechanisms are in place to promote consistency in decision making?

A regular policy forum meets monthly for the purpose of discussing policy, its interpretation and application, with a view to increasing consistency in decision making.

The policy unit of the board holds regular education and training sessions on new board policies.

The board is establishing a quality assurance unit with the goal of achieving 100% compliance with policy.

5. Do workers and employers have access to their information in board files? If yes, is this because of a provision in the workers' compensation legislation or a result of the Freedom of Information and Protection of Privacy Act? Is further information found in sub-files which do not form part of the claim file? And if so, are the sub-files disclosed?

Is relevancy of material in a board file a prerequisite to its disclosure to the affected worker or employer? If so, who determines whether the information is relevant and on what basis? Does the worker or employer have the right to object to the relevancy of the information after it has been disclosed?

Workers and employers have complete access to their own files.

An employer has access to their workers' files on request, but the worker is informed of this request and has the right to object to the release of the information. If the worker objects to the release, the President is responsible for considering whether or not the information should be released to the employer. In making a determination, the President considers whether the information is relevant to the issue - if the matter is being appealed and the information relates to the appeal, the information will be released; if not relevant to the issue being appealed, the information will be severed.

6. Is there any "informal" review process for workers and employers regarding claims adjudication or assessment decisions (i.e. review by supervisor or manager prior to the formal internal reconsideration or review process and external appeal process, if any)?

If yes, are there any statistics available on the total number of issues reviewed and the allow/disallow rate for this informal review process (are there any statistics kept on the number of issues reviewed, and the allow/disallow rate broken down by type of issue - for example, assessment decisions, compensability, level of benefits)?

There is a board directive requiring that the Director of Claimant Services review all files that are the subject of a review, prior to the issue going for formal review. There is a three day turnaround for this review. In practice, the adjudicator reviews
the file and then goes through the Manager and then the Director. This is a supervisory review only and the Director has no authority to change the decision of the adjudicator.

7. Is there a formal "complaints" review process in your jurisdiction, distinct from any internal review or external appeals process, to deal with complaints from clients of the board regarding the conduct of board officers and staff or service issues? If yes, is this process independent of the board?

There is no formal, independent complaints process in the Yukon.