

INTERIM POLICY 16.40

Section: Aggravation and Reopening **Effective:** 12-1-08

Title: Reopening and Processing Requests for Disability Benefits on Claims Closed Over Seven (Ten) Years **Cancels:** Policy 16.40 dated 11-1-96

See Also: RCW 51.28.040 (change in compensation)
RCW 51.32.160 (aggravation)
WAC 296-14-400 (reopenings for benefits)
WAC 296-15-470 (Self-Insurance, reopenings)
WAC 296-20-097 (reopenings)
Policy 5.91 (voluntary retirement)
Policy 16.20 (criteria for reopening)
Policy 16.31 (90-day limit)
Policy 16.35 (paying provisional time-loss)
WCA Manual, Chapter 10 (reopenings)
Self-Insurance WCA Manual, Chapter G (aggravation)

Approved by: _____
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This policy applies when the department or self-insured employer receives a request to reopen a claim more than seven years (or ten years for a claim for loss of vision or function of the eyes) after the first medically documented closure or reopening denial became final. For this document, adjudicator means a department adjudicator.

- 1. The adjudicator must determine if the request for reopening was received more than seven (ten) years after the first medically documented closure or reopening denial became final.**

The seven (ten) year time limit begins with a medically recommended closure or reopening denial. Adjudicators determine the date the order became final by:

- Counting seven years plus 60 days from the department order if no protest or appeal was filed; **or**
- Counting seven years from the date of the last Board of Industrial Insurance Appeals or court decision or judgment if the department's order was appealed.

An application for reopening where a claim was closed without medical opinion is not subject to the seven (ten) year time limit. The first medically recommended closure or reopening denial starts the seven-year clock.

2. The adjudicator must determine whether to reopen an “over-seven” claim for medical benefits.

The same criteria is used to make a determination on all reopening requests. (See Policy 16.20.)

3. Provisional time-loss benefits are not payable on a pending “over-seven” reopening application.

4. The director has sole discretion to grant or deny payment of disability benefits on an “over-seven” reopened claim.

For state fund claims, disability benefits are paid from the Accident Fund. Disability benefits include:

- Time-loss (TL);
- Loss of earning power (LEP);
- Vocational services;
- Permanent partial disability (PPD); **and**
- Total permanent disability (TPD) awards.

5. The adjudicator must prepare a briefing paper for the director’s consideration when disability benefits are contended on a reopened “over-seven” claim.

The adjudicator must advise the director of the following:

- Accepted and denied conditions on the claim.
- A brief claim summary including treatment, vocational decisions, and PPD.
- Information to show the claim is an “over-seven.”
- The reason for reopening.
- Relationship of the current need for treatment to the original injury or occupational disease compared to the affects of aging or intervening accidents.
- The worker’s past and recent work history and current attachment to the workforce, including whether the worker is voluntarily removed from employment.
- Medical documentation supporting the degree of impact the current condition has on the worker's ability to work in both the short and long term.

- Whether there is a significant increase in PPD.
- Other factors that may serve the interest of equity and good conscience.
- An explanation if there is a delay between the request for benefits and the recommendation.
- A recommendation to grant or deny accident fund benefits.

NOTE: If recommending TL/LEP benefits, the adjudicator must include the suggested effective date.

6. The adjudicator must issue an order when the director makes a decision to grant or deny disability (accident fund) benefits.

A letter with the director's signature is sent to the worker either granting or denying benefits. A copy of the letter is sent to the adjudicator. When this copy is received, the adjudicator issues an order reflecting the director's decision. The order must include protest and appeal rights.

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