

Claim Validity

Self-insurance Claim Adjudication Guidelines

	Page
<u>Injury vs. Occupational Disease</u>	3
<u>When Validity Requires Additional Investigation</u>	3
<u>Claim Validity for Injury Claims</u>	3
<u>Timely Filing of Injury Claims</u>	3
<u>Prima Facie Case Requirement for Injury Claims</u>	4
<u>Injury Claim Adjudication</u>	4
<u>Legal Definition of Injury</u>	4
<u>Pre-existing Conditions</u>	5
<u>Course of Employment</u>	6
<u>Parking Lots</u>	6
<u>Coming and Going</u>	7
<u>Coming and Going in Company Provided Transportation</u>	7
<u>Coming and Going When the Work Causes the Worker to Travel Away From</u> <u>Employer Premises</u>	7
<u>Coming and Going and on a Business Errand</u>	8
<u>Deviation</u>	8
<u>Personal Comfort and Lunch Breaks</u>	9
<u>Intentional Injuries</u>	9
<u>Felonies</u>	9
<u>Horseplay</u>	10
<u>Altercations and Assaults</u>	10
<u>Recreational Activities</u>	10
<u>Goodwill Actions</u>	11
<u>Mental Stress Claims</u>	11
<u>Causal Relationship</u>	11
<u>Claim Validity for Occupational Disease Claims</u>	11
<u>Timely Filing of Occupational Disease Claims</u>	11
<u>Criteria for Allowance of Occupational Disease Claims</u>	12
<u>Occupational Disease Claims Adjudication</u>	12
<u>Legal Definition of Occupational Disease</u>	12
<u>Legal Requirement: Arise Naturally</u>	12
<u>Common to All Employment or Non-Employment Life</u>	14
<u>Mental Stress</u>	14
<u>Coincidental to Employment</u>	14

<u>Distinctive to the Worker</u>	14
<u>Legal Criteria: Proximate Cause</u>	15
<u>Medical Requirement: Probable Medical Opinion</u>	15
<u>Medical Requirement: Objective Medical Findings</u>	15
<u>Date of Injury for Occupational Disease Claims</u>	16
<u>Adjudication of Hearing Loss Claims</u>	16
<u>Types of Hearing Loss</u>	17
<u>Date of Manifestation for Occupational Hearing Loss Claims</u>	18
<u>Medical Opinion</u>	19
<u>Audiograms</u>	20
<u>Which Audiogram to Use</u>	21
<u>Reading the Audiogram and Calculating the Loss</u>	21
<u>Tinnitus</u>	22
<u>Disease Based Hearing Loss</u>	22
<u>Liable Insurer</u>	22
<u>Occupational Disease in Fire Fighters</u>	22
<u>Special Situations</u>	24
<u>Repair or Replacement of Person Items</u>	24
<u>Glasses, Hearing Aids, Contact Lenses and Artificial Appliances</u>	25
<u>Groin Strain</u>	25
<u>Psychiatric Injury Claims</u>	25
<u>Exposure to Heat and Cold</u>	25
<u>Carpal Tunnel Syndrome</u>	25
<u>Thoracic Outlet Syndrome</u>	26
<u>Hemorrhoids</u>	26
<u>Epididymitis</u>	27
<u>Filing an Infectious Disease Claim</u>	27
<u>Plantar Fasciitis</u>	27
<u>Fibromyalgia</u>	28
<u>Cardiovascular Injuries</u>	29
<u>Lead Poisoning</u>	32

Injury vs. Occupational Disease

When a claims manager reviews a claim, he or she begins by determining if the claim is filed for an injury or an occupational disease. The type of claim that is being filed will dictate further adjudication, including the application of timely filing requirements and requirements for allowance.

[RCW 51.08.100](#) defines an injury as “a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom.”

[RCW 51.08.140](#) defines an occupational disease as a “disease or infection that arises naturally and proximately out of employment.”

When Validity Requires Additional Investigation

[RCW 51.14.130](#), [WAC 296-15-420\(2\)\(4\)](#)

Self-Insurer Employers are required to make a determination on a claim within 60 days from the date the claim is filed by requesting:

- Allowance (except on medical only claims where an allowance order is not required),
- Denial, or
- An interlocutory order.

An extension to the interlocutory period may be requested by letter and must include:

- A valid reason (i.e., worker was unable to attend a scheduled IME due to a family emergency and the examination could not be rescheduled within the 60 day period originally granted).
- Documentation of activity on the claim since the original interlocutory request was made

Extensions will not be made due to inactivity.

Claim Validity for Injury Claims

Timely Filing of Injury Claims [RCW 51.28.050](#)

Where an injury is contended in covered employment, the initial determination made by a claims manager is whether the claim has been filed on a timely basis. [RCW 51.28.050](#) indicates injury claims must be filed within one year after the day of the injury.

The law does not require the worker to apply for benefits on the department's official accident report form or the self-insured employer's SIF-2. A letter or statement signed by the worker regarding the injury will satisfy the filing and timeliness requirement. However, the claim manager should request the worker submit an SIF-2 if he or she initially filed application for benefits on something other than the SIF-2 form. If there is sufficient information, the claim manager may establish the claim while awaiting the worker's response.

A claim must be rejected if application is not made within one year after the date of injury. The date used to calculate timely filing is the accident report/SIF-2 first received date by the department or the self-insured employer.

Before a rejection order is requested, it should be determined whether the application is actually being submitted for the purpose of reopening an older claim previously established with the same injury date. Also, other dates referenced on an accident report should be closely examined to determine whether the entry for the date of injury is a typographical error.

The department has no authority to waive or make an exception to the time-limit statute because of hardship to the worker or any other circumstances. A trauma claim mistakenly allowed where it was filed more than one year after the day of the injury should be rejected at the time the error is discovered. This action is appropriate even if the claim previously had orders issued which would otherwise be considered final and binding. Case law has held that if the one-year period has expired, the department does not have the jurisdiction to allow the injury claim and any order issued after the statutory time limit is considered void (*Wheaton v. Dept. of L&I*).

Prima Facie Case Requirement for Injury Claims

Prima facie is Latin for "at first view." Prima facie means an injury claim should be allowed if the evidence in the claim supports allowance, and no evidence is produced to dispute allowance. Three requirements establish a prima facie case for injury claim allowance.

- Legal definition of injury – a descriptive statement must satisfy the legal definition of an injury, and
- Course of employment – the worker must have been acting in the course of employment, and
- Causal relationship – a medical opinion must relate the condition diagnosed to the incident or exposure on a more probable than not basis.

Injury Claim Adjudication

Legal Definition of Injury [RCW 51.08.100](#)

"Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result there from.

Most injuries involve a relatively straightforward assortment of bumps, bruises, lacerations, strains, etc. Many disputed or questionable claims involve the issue of whether a particular activity or event falls within the meaning of an “injury” as was intended by the legislature.

According to the definition, there must be more than the onset of symptoms or even the onset of disability during working hours, to qualify for benefits.

There has been guidance given by the courts in cases where the injury seemingly does occur from outside the body and the activity does not require a degree of stressful exertion. As a result of the 1981 case of *Longview Fibre Company v. Weimer* (*Longview Fibre Company v. Weimer*), the definition of injury was expanded to include musculoskeletal conditions caused by normal bodily movement during the course of employment; no unusual or awkward angle is required for the injury to be valid, even if the injury only aggravates a pre-existing condition.

The definition of an injury was expanded by the court to include a series of jolts and jars in a defined period of time, resulting in a physical condition. (*Lehtinen v. Weyerhaeuser Co.*) In this case the worker received frequent jolts during one day while he was operating an insecurely anchored yarding machine.

When the accident report does not have enough information to make this determination, clarification should be requested by telephone, letter, or investigation. Clarification should include a completed description of the events leading to the incident, the nature of the worker and corroboration by any witnesses. The time to gather this information is in the beginning of the claim process and before the matter goes to litigation.

Pre-existing Conditions

The presence of a pre-existing condition does not disqualify a worker from receiving benefits under the law. A claim is allowable for an “injury” sustained in the course of employment regardless of the worker’s physical condition when the injury occurred. A major factor in determining responsibility in cases involving aggravation of pre-existing conditions is whether the condition existed prior to the injury. If it is determined that the condition was asymptomatic and non-disabling prior to the injury and, in effect, was activated or “lighted up” by the injury, responsibility must be accepted for the full effects of any resulting disability. (*Miller v. Dept. of L&I*) If medical evidence discloses the injury has accelerated a pre-existing symptomatic or disabling condition, the extent of that acceleration must be determined and the appropriate benefits, both medical and disability if indicated, awarded.

It is possible for a pre-existing symptomatic or asymptomatic condition to suffer a temporary aggravation or exacerbation as a result of a traumatic injury. In such cases, the effects of the incident exert only a temporary effect upon the condition of the worker and the worker returns to the pre-existing level of function or impairment after the aggravation has subsided. Particularly where the pre-existing disabling condition was symptomatic, it is necessary for the worker to establish the work activity did not merely produce symptoms, which are present during other activities, but some measurable aggravation or increased disability was caused by the incident. The records of a prior treating provider or opinion of that provider if they are still treating the

worker are the most useful factors to be considered in making a determination. Independent medical opinion (with access to prior records) may prove to be necessary in disputed cases.

Course of Employment [RCW 51.08.013](#)

An injury does not need to be caused by a work-related activity. The worker must be acting at his or her employer's direction or furthering the employer's business.

Key distinctions between the law in Washington State and some other jurisdictions are:

- No consideration is given to degrees of "fault" by the worker or employer in determining entitlement to benefits.
- While it is necessary the injury occur in the course of one's work, it is not necessary the injury "arise out of" the particular duties a worker is paid to perform.

The more difficult questions concerning "course of employment" issues will generally fall into one of the categories that follow.

Parking Lots [RCW 51.08.013](#)

Injuries occurring in parking lots are not ordinarily allowable. However, the courts have determined that the statute allows coverage for injuries in parking lots if the job duties require the worker's presence in the parking lot. For example, a grocery store employee who is injured while carrying groceries to a customer's car would be covered.

In general, workers reporting for work at the beginning of their shifts and leaving at the end of their shifts would not be covered for injuries in parking areas. The difficulty with these types of claims is that a parking area may be considered to be such by one party, but not another. If the area is used primarily for storage, loading and unloading materials or other use, coverage would not automatically be excluded. A worker is also covered under certain circumstances while walking from an employee designated parking area to the job site. (See the next section on "Coming and Going" for further details.)

Questions regarding the reasons a worker was in a parking area at the time of injury should be clarified before making a determination. If a claims manager is unclear about coverage, several considerations may help.

- What did the worker indicate as the time of injury and work shift?
- Why was the worker in a parking area at the time of injury?
- Where is the parking area in relation to the jobsite and injury location?
(See *Olson v. Stern*, *Taylor v. Cady*, *Boeing Co. v. Rooney*, *UW Harborview Medical Center v. Marengo*, *Madera v. J.R. Simplot Co.*, and *Puget Sound Energy Inc. v. Adamo* for cases pertaining to parking lots.)

Coming and Going [RCW 51.08.013](#)

A worker injured going to and coming from the place of work in a private vehicle is usually not considered in the course of employment. However, the worker is covered within a company-controlled area, except a parking area, while reporting to or leaving work. This may include immediately before or after a time clock has been punched. Workers who must report prior to their shift to change into uniforms or clothing required by the job are considered covered because these actions further the interests of the employer. (*Gordon v. Arden Farms*)

A worker may be covered while coming from or going to an employer-designated parking area if the route exposes the worker to hazards not commonly shared by the general public. (*Hamilton v. Dept. of L&I*) Coverage is also extended when a hazard arises from the employer's business even if the general public is also exposed to it. (*ITT Baking Co. v. Schneider*)

Coming and Going in Company Provided Transportation

A worker may be covered when an employer provides transportation or compensation for travel. This arrangement can be a contractual obligation, an employee benefit, or a requirement of the job.

When the employer furnishes the worker with transportation to and from work, coverage for a worker's injury is not dependent upon the method of travel. The employer may:

- Provide a vehicle. Coverage begins when the worker enters the vehicle and ends after completing the business-related travel. (*Venho v. Ostrander Railway & Timber Co.*)
- Reimburse a worker for the cost of transportation. (*Aloha Lumber corp. v. Dept. of L&I*)

This rule even applies when the worker uses private transportation and receives only a "flat mileage" reimbursement not actually representing compensation for the full distance traveled from residence to jobsite. For example, a worker resides a substantial distance from the union hiring hall and drives from the union hall to his job. Travel is paid only from the union hiring hall to the jobsite. In a case like this, the claims manager should obtain a copy of the employer's written agreement for travel.

In 1993, the legislature amended [RCW 51.08.013](#)(2) to exclude coverage when the worker participates in an employer-sponsored ride-sharing or commuter program. Coming and going does not include alternative commute modes as defined in [RCW 46.74.010](#), even if the employer provides subsidized passes for commuting. Alternative commute mode includes ride-sharing through car or van pools, taking the bus or ferry, and walking or biking.

Coming and Going When the Work Causes the Worker to Travel Away from Employer Premises

In situations where the worker's job involves travel away from the employer's premises, he or she will normally be considered to be in the course of employment continuously during the entire trip. For this reason, injuries are usually found to be allowable when they occur while the worker, by necessity, is sleeping in motels or eating in restaurants away from home.

Each claim must be considered on an individual basis to determine whether or not the worker was in the course of employment at the time of the incident.

Coming and Going and on a Business Errand

While traveling to or from work, a worker conducting an errand for the employer is covered while the business-related duty is being performed. For example, when a store owner asks a clerk to take a deposit to the bank, the worker is covered if injured while on this errand.

Deviation

If a worker significantly deviates from a business related task, they may not be covered, even if employer provided or reimbursed transportation. The factors that should be weighed in determining coverage are:

- The nature and purpose of the business travel.
- The nature of the deviation from the expected route.
- The length of time the side trip involves.
- The point at which the injury took place.
- The distance from the expected travel route to the place where the injury occurred.
- Any additional hazards caused by deviation from the expected travel route.

In evaluating deviation, the first step is to diagram a picture of the entire trip, including each of the following:

- The main business trip.
- Any personal side trip (deviation).
- The point of accident.
- The route the worker would have taken from that point if the accident had not occurred.
- Whether the worker had returned to the business route when the accident occurred.

Coverage would normally exist if each of the following conditions occurs:

- The injury is sustained before the worker deviated from or after the worker returned to the expected route.
- The worker is furthering the interests of the employer.
- The worker is performing duties as directed by the employer.

If the injury is sustained prior to the deviation from the expected route and the worker is furthering the interests of the employer and in performance of his/her duties as directed by the employer, coverage will normally exist. Coverage would also exist once the worker has returned to the expected route. (For deviation case law, see *Flavorland Industries Inc. v. Schumacker*, *Gray v. Dept. of L&I*, *Hays v. Lake*, *Hill v. Dept. of L&I*, and *Morris v. Dept. of L&I*.)

Personal Comfort and Lunch Breaks [RCW 51.08.013](#), [RCW 51.32.015](#), [RCW 51.36.040](#)

The personal comfort rule applies when a worker is injured during a personal comfort activity. A personal comfort activity is reasonably necessary to the life and comfort of the worker. Examples of personal comfort activities include leaving the job station because of excessive heat or cold, taking a break, getting coffee or a drink of water, and using the restroom. These activities are considered to be in the course of employment for coverage as long as each of the following is met:

- The worker was on the employer's premises or used facilities near the jobsite, depending upon the nature of the job.
- The injury was sustained during paid working hours or during a lunch break on the jobsite.
- The activity was implicitly or explicitly allowed by the employer.
- The activity assisted the employer by helping the worker efficiently perform the job.

A worker is covered during a lunch break on the employer's premises or on a business lunch away from the employer's premises. In addition, workers are covered for damage to teeth or dentures during activities that meet all of the personal comfort doctrine criteria. An injury does not need to be caused by a work-related activity.

After leaving the jobsite during break or lunch for personal reasons (not at the employer's direction), the worker is not covered. Coverage is reinstated when the worker returns to the jobsite. (See *Weldon v. Skinner & Eddy Corp.* and *Bergsma v. Dept. of L&I*.)

Intentional Injuries [RCW 51.32.020](#)

A claim is not allowable if the worker deliberately injures or kills themselves. However, a worker's disregard for normal practice or safety rules, even to the point of gross negligence, does not constitute intentional injury.

Felonies [RCW 51.32.020](#)

A claim is not allowable if the worker was injured or killed while committing a felony. For example, the claim of a bank guard shot while robbing the bank at which he worked would not be covered because the guard committed a felony. However, a truck driver involved in a wreck while exceeding the speed limit would be covered even though the law is broken. Speeding is not a felony.

Horseplay

Horseplay between workers that minimally interrupts work is usually covered as long as it does not take them significantly away from the course of employment. (*Tilly v. Dept. of L&I*) The following factors should be considered in deciding whether there was a substantial deviation from the employment.

- The extent and duration of the deviation. Does the horseplay necessitate the complete abandonment of the employment for a substantial period of work time?
- The completeness of the deviation. Was the horseplay mixed with job performance, or did it involve the abandonment of duty?
- The extent to which the practice had become an accepted part of employment. Was the employer aware of the practice, or did the employer condone the practice?
- The extent to which the nature of the employment or activity during unavoidable idleness on the job could be expected to include such horseplay.

Sometimes, horseplay can injure a worker not involved in the horseplay. When that happens, the innocent worker is covered as long as they are in the course of employment. To determine coverage, the claim manager must examine:

- Where the injury occurred in relation to where the worker was expected to be.
- Who else was involved.
- What other factors affected the extent of deviation, if any, from the course of employment.

Altercations and Assaults

The factors that apply to horseplay also apply to altercations (quarrels) between workers, an assault by one worker on another, or an assault on a worker by a non-worker. In addition, the claim manager must establish that the worker was in the course of employment when the altercation or assault occurred. A worker may be considered removed from the course of employment if he or she assaults a coworker. If the dispute, which led to the fight, arose out of an employment situation coverage would exist. If the dispute arose out of purely personal issues, coverage would not exist. Likewise, a worker who leaves the jobsite to fight is no longer in the course of employment, regardless of whether he or she is the aggressor (See *Blankenship v. Dept. of L&I*).

Recreational Activities [RCW 51.08.013](#)

In 1995, legislation changed the definition of “acting in the course of employment.” Workers are not in the course of employment when they participate in social, recreational, or athletic activities, competitions, or events, whether or not the employer pays some of the cost of these activities. There are three exceptions. Workers are covered during these activities when they:

- Participate during work hours, or
- Are paid by the employer to participate, or
- Are directed, ordered, or reasonably believe they are directed or ordered, by the employer to participate.

Goodwill Actions

Very little guidance has been provided by the courts on cases where a worker is injured while assisting in an emergency. Going to the aid of someone in a life-threatening emergency may be covered if:

- The worker's employment brought him or her in contact with the emergency situation.
- The situation in some way was proximate to the worker's job. The individual in need of assistance need not be a coworker.
- The employer derives some benefit, even if it's only goodwill to the community, from the act.

Mental Stress Claims [RCW 51.08.142](#), [WAC 296-14-300](#)

A claim for mental stress can only be allowed if the stress resulted from a single, traumatic event. For example, a mental stress claim could be allowed for a window washer who saw his or her partner fall to the ground. Since the stress resulted from a single, specific incident, this would be an injury claim. The law specifically excludes mental health conditions or disabilities caused by stress from coverage as occupational diseases. This means the only allowable mental stress claim would be an injury claim.

Causal Relationship

Medical Opinion

There must be a causal relationship between the description of the injury and the condition diagnosed. The doctor must provide a medical opinion of whether or not the diagnosed condition was caused by the injury or exposure described. It is not sufficient that a doctor indicate that the injury possibly resulted in a physical condition. The possibility of a connection is not enough to allow a claim. The doctor must find, more probably than not (greater than 50 percent), that the diagnosis results from the work injury or exposure. (*Seattle-Tacoma Shipbuilding Co. v. Dept. of L&I*; *Krlevich v. Dept. of L&I*; and *Rambeau v. Dept. of L&I*)

Claim Validity for Occupational Disease Claims

Timely Filing of Occupational Disease Claims [RCW 51.28.055](#)

Claims for occupational disease must be filed within two years following the date the worker had written notice from a doctor that an occupational disease exists and a claim for disability benefits

may be filed. The doctor must file the written notice with the department. The department has no authority to waive the statutory filing time limit.

While determining whether to allow an occupational disease claim, any additional medical information should be reviewed to verify timely filing and the date of manifestation. An occupation disease claim is timely filed by the:

- Worker within two years from the date of the written notice from a doctor that the condition was occupationally related and a claim may be filed.
- Spouse or beneficiary within two years from the date of written notice from the doctor that the death was occupationally related and a claim could be filed **if the worker did not** file a claim. Note: If the worker did file a claim and later died, the spouse or beneficiary must file for death benefits within one year of the date of death.

Criteria for Allowance of Occupational Disease Claims

After timely filing, three additional requirements must be met before an occupational disease can be allowed:

- Legal requirement – the disease must arise naturally and proximately out of employment, and
- Causal relationship – the doctor must state, on a more probable than not basis, the disease is related to the work activities, and
- Medical findings – the doctor must substantiate the diagnosis with objective medical findings.

Occupational Disease Claims Adjudication

Legal Definition of Occupational Disease [RCW 51.08.140](#)

“Occupational Disease” means such disease or infection as arises naturally and proximately out of employment.

An occupational disease occurs over time, rather than from a fixed event. That is the key distinction between an occupational disease and an industrial injury

Legal Requirement: Arise Naturally

An occupational condition or disease must arise naturally and proximately out of employment. To meet the definition of arising naturally out of employment, a condition must be a natural consequence of the distinctive conditions of employment. The disease must arise from the distinctive job requirements, rather than merely the workplace or everyday life.

In 1987, the Dennis decision (*Dennis v. Dept. of L&I*) expanded the definition of occupational disease to include a work-related aggravation of a preexisting nonwork-related disease and symptomatic (with symptoms) or asymptomatic (without symptoms). The decision defined a disease-based disability as an aggravation of a pre-existing condition.

The Dennis decision also clarified that for the disease or disease-based disability to arise naturally out of employment, it must result from the distinctive conditions of employment. The disease must be a natural consequence of the work process. A condition that arises naturally from distinctive conditions of employment:

- Must result from a recognizable or characteristic risk, such as an exposure, or task, such as repetitive use of a body part, constant tool gripping or pinching, vibrating equipment, constant reach, etc., that is required or expected of the worker to perform his or her job duties.
- Need not be peculiar or unique to the worker's particular occupation.
- Must be related to the worker's employment, rather than merely the workplace.
- Must be related to the particular employment, rather than to everyday life or all employment.
- Must result from the distinctive conditions of employment. In other words, the disease must be related to the particular employment rather than those present in everyday life or all employment.

The following categories are provided as an aid to identifying **distinctive conditions** of employment. Not all occupational disease will result from one of these general categories.

- **Unique to Employment:** A disease or disease-based disability that could not be contracted elsewhere is considered unique to employment. For example, only a coal miner can contract black lung disease. Therefore, the disease is unique to the employment.
- **Increased Risk:** Increased risk means that the conditions of the particular occupation, rather than other employment or non-employment, expose the worker to an increased or greater risk of contracting the disease. (*Sacred Heart v. Carrado*)
- **Continuous and Specific Activity:** This may be repetition of similar movements (like a grocery store checker/scanner makes) or a series of jars and jolts (like a jackhammer operator experiences). The activities must be required to perform the job. For example, a worker who has done a variety of jobs requiring hard labor would not be covered unless each of the jobs required similar, continuous specific activity.

If disease or disease-based disability did not result (arise naturally) from distinctive conditions of employment, the legal requirement is not met. A claim is not allowable as an occupational disease if it results from activities that are:

- Common to all employment or non-employment life.
- Coincidental to employment.
- Distinctive to the worker.

Common to All Employment or Non-Employment Life

Diseases that can be contracted from conditions present in all employment or non-employment settings are considered common to all employment or non-employment life. For example, an office worker who develops degenerative disc disease in the lower back from 30 years of sitting, standing, and walking at work. This would not be allowable as those activities are common to all employment and non-employment life.

Mental Stress [RCW 51.08.142](#), [WAC 296-14-300](#)

Another example of conditions generally common to everyday life or all other employment is mental stress. The law excludes allowance of any claim for mental conditions or disabilities caused from occupational stress. Only stress resulting from a single, specific incident can be considered for allowance as an injury claim (*Dept. of L&I v. Kinville*).

Coincidental to Employment

Situations where the contraction of the disease is related merely to the workplace are considered coincidental to employment and are not allowable as occupational disease claims. For example, a worker in a sales office contracts influenza from a co-worker. This would not be allowable as the condition is coincidental to employment.

Distinctive to the Worker

If the disease results from the worker's personal choice in performing work activities, rather than distinctive conditions of employment, it is considered distinctive to the worker. For example, an employer provides an airline reservation clerk with a headset. She chooses instead to cradle a standard telephone receiver between the shoulder and neck, resulting in cervical disc disease. This would not be allowable as the condition is distinctive to the worker.

When adjudicating occupational disease claims that do not clearly meet the legal criteria of arising naturally out of employment, the following questions should be asked to determine whether the activity is distinctive to employment:

- Is the activity distinctive to the worker's employment, rather than general and common to everyday life and all employment?
- Did the worker perform the work duties as required?
- Are the activities distinctive to employment, rather than merely distinctive to the worker?

If yes, the claim manager must ensure all other allowance requirements (proximate cause, timely filing) have also been met. If no, the claim would not be allowable.

Legal Criteria: Proximate Cause

An occupational disease or disability must arise proximately out of employment. This is called “proximate cause”.

The meaning of proximate cause was clarified in the Simpson case. (*Simpson Logging Company v. Dept. of L&I*) It must be established that the (distinctive) conditions of employment are probably the proximate cause of the disease. The conditions of employment need only be one of the causes of the disease. However, if it appears that another condition may be the sole cause of the disease, it is important to clarify proximate cause. The claims manager must provide the doctor any information that does not clearly support proximate cause and obtain clarification. A claim must meet the legal requirements of arising naturally and proximately to be allowed as an occupational disease.

Medical Requirement: Probable Medical Opinion

It is not sufficient that a provider give an opinion that the claimant’s work condition “might possibly”, “could possibly”, or “may be” the cause of the disease or disease-based disability. The findings must be based on a “probable” or “more probable than not” (more than 50% likelihood) connection between the work conditions and the disease or disease-based disability.

Sufficient Medical Opinion: An attending provider reports that the repetitive use of tin snips did make or probably did make the osteoarthritis in the claimant’s wrists symptomatic and disabling.

Insufficient Medical Opinion: A cedar mill worker smokes cigarettes for fifteen years and files a claim for a pulmonary condition. The provider states that the working conditions “possibly did” or “could have” or “perhaps” caused the disease or disease-based disability.

The claim is denied when the provider’s opinion is based upon any terminology that is speculative in nature. There must be a “more probable than not” or definite opinion regarding the causal connection.

Medical Requirement: Objective Medical Findings

Objective medical findings are those findings that can be seen, felt, or measured by the examining provider. Subjective medical findings are those findings that cannot be seen, felt, or measured by a provider.

Sufficient Medical Findings: A provider provides results of a pulmonary function test to compare lung capacity prior to employment and lung capacity during employment in a cedar

mill. The pulmonary function test provides the necessary objective medical findings to support the connection between the work conditions and the disease.

Insufficient Medical Findings: A worker reports painful or difficult respiration. There are not objective medical findings by a provider to substantiate the pain or existence of a respiratory problem. A worker's subjective complaints alone will not support a connection between the worker's employment and a disease or disease-based disability.

Date of Injury for Occupational Disease Claims

[RCW 51.32.180](#), [WAC 296-14-350](#)

Correctly establishing the date of injury for a claim is important. It will determine the monthly time loss rate and PPD schedule used in calculating the worker's benefits. While establishing the date of injury for an injury claim is usually straightforward, establishing a date of injury for an occupational disease is more difficult since no specific incident marks the onset of the disease.

In 1988, [RCW 51.32.180](#) was revised to base a worker's occupational disease benefits on the date the disease manifested, rather than the date of last injurious exposure. The department adopted [WAC 296-14-350](#) to clarify this date. For a claim filed on or after July 1, 1988, the date of manifestation of the occupational disease is either the date the disease first required medical treatment or became totally or partially disabling, whichever occurred first. In most cases, it is the date the worker first saw a doctor for the condition.

Compensation shall be based on the monthly wage of the worker as follows:

- If the worker was employed on the date of manifestation, compensation shall be based on the monthly wage paid on that date regardless of whether the worker is employed in the industry that gave rise to the disease or in an unrelated industry.
- If the worker was not employed, for causes other than voluntary retirement, on the date of manifestation, compensation shall be based on the last monthly wage paid.

For determining date of manifestation on occupation hearing loss, see Adjudication of Hearing Loss Claims.

Adjudication of Hearing Loss Claims [RCW 51.28.055\(2\)](#)

Traumatic injuries to the ear should be adjudicated like any other injury claim. An occupational disease hearing loss claim is more complicated to adjudicate. Hearing loss resulting from long-term exposure to excessive noise at work is commonly referred to as occupational hearing loss. Since this condition is the result of long-term exposure, these claims are adjudicated according to the statutes related to occupational diseases and the same criteria must be met. Typically, the only treatment involved in these claims is appliances, such as a hearing aid or tinnitus masker.

Occupational hearing loss benefits may be limited. If the claim is not filed within two years of the date of last injurious exposure or by September 9, 2004, whichever is later, the worker will be eligible for Medical Aid benefits only. This means the worker who files the claim more than two years after the date of last injurious exposure can receive hearing aids and lifetime repairs or replacements, but no PPD.

To determine claim validity, the claims manager needs to establish if the worker was exposed to hazardous noise levels at work and may need to find out whether the worker was exposed to excessive noise in previous employments or everyday life, such as personal use of power tools or guns. This will help clarify the proximate cause of the hearing loss.

Noise level surveys are also a valuable tool. For a noise survey to be valid, it must have been conducted during the period of time the worker was exposed.

Types of Hearing Loss

There are two types of hearing loss that the claims manager needs to consider: conductive and sensorineural. At times, a worker can experience a combination of both conductive and sensorineural.

Conductive hearing loss

Conductive (conducts sound) hearing loss is a breakdown or obstruction in the transmission system. This type of hearing loss:

- Is not caused by continuous excessive noise exposure.
- May be caused by a blockage of the external ear canal with ear wax, a foreign body, a broken ear drum or head trauma.
- Is usually injury-induced, such as a sudden explosion or head trauma. Note: A work-related injury-induced hearing loss is an injury, not an occupational disease.

Sensorineural hearing loss

Sensorineural hearing loss results from changes in the inner ear or in the nerves carrying impulses to the brain. This type of hearing loss:

- Is permanent, and not treatable by medical or surgical means.
- Is usually preventable with appropriate ear protection.
- Usually creates the need for a hearing aid.
- Can result from long-term exposure to noise and is considered an occupational disease, if industrially related.
- Can also be caused by disease, tumor, and the aging process (presbycusis).

Presbycusis

Presbycusis is the gradual reduction of hearing caused by aging. This type of hearing loss:

- Occurs gradually over a period of years, with the very highest frequencies (8,000-12,000 Hertz or Hz) affected first, and the lower ones gradually following.
- Generally affects both ears at about the same rate.
- Generally is not noticed until the worker is over 60 years old.
- Evolves gradually into a difficulty understanding what has been said, rather than difficulty in hearing. This is due to the hearing loss affecting the higher frequencies first.

Presbycusis is a form of sensorineural hearing loss and can occur concurrently with noise-induced hearing loss. If presbycusis is present, the proximate cause of the worker's hearing loss must be clarified: Is the proximate cause noise exposure or presbycusis? The effects of presbycusis are not segregated when occupational noise exposure is the proximate cause of the worker's hearing loss and the claim is allowed. (*Boeing Co. v. Heidy*)

Tinnitus

Tinnitus is a perception of sound when there is nothing external (no acoustic stimulus) to cause sound. It is often referred to as "ringing in the ears". This sound:

- May be a buzzing, ringing, roaring, whistling or hissing, or may involve more complex sounds that vary over time.
- May occur as a symptom of nearly all ear disorders, including obstruction of the ear canal, noise-induced hearing loss, sensorineural hearing loss, acoustic trauma and head trauma.
- Usually exists with another type of hearing loss.
- Is sometimes helped by using a tinnitus masker.

Work-related hearing loss conditions

Both conductive and sensorineural hearing loss can be work-related conditions. Conductive hearing loss may be injury-induced, like a welder having a hot slag land in his or her ear canal, damaging the eardrum. This would be an injury claim.

Sensorineural hearing loss can be the result of long-term exposure to loud noises, like those a machine shop worker experiences. This would be an occupational disease.

Date of Manifestation for Occupational Hearing Loss Claims

The date of manifestation for hearing loss claims is the:

- Date the occupational disease required treatment, or

- Date of last injurious exposure.
- Whichever occurred **first**. (*Harry v. Buse Timber & Sales, Inc.*)

Medical treatment is the date the worker consulted with a doctor or received a hearing aid from a licensed provider, whichever occurred first. An audiogram is not considered medical treatment.

Date of manifestation for subsequent occupational hearing loss claims

If, after the closing of a prior claim for hearing loss, a worker is exposed to injurious occupational noise, the worker should file a new claim. The date of manifestation for the new claim will be the date the worker received medical treatment for the additional hearing loss or the last injurious exposure, whichever occurred first after the closure of the prior claim.

Medical Opinion

Medical opinion must relate the condition to the work place. The examining doctor determines if and where the worker received injurious noise exposure. Medical opinion must also be present regarding the percentage of hearing loss in conformity with the American Medical Associations (AMA) guidelines.

If the worker has not undergone medical examination by a qualified provider in the process of filing the claim, an independent medical examination should be scheduled near the worker's home.

Tests range from simple screenings, such as producing a loud noise and observing the test subject, to complex tests with detailed measurements, such as the auditory evoked responses test in which an electroencephalogram is used to detect brain wave response to sounds. There are many hearing function tests:

- Audiogram - An audiogram tests a worker's ability to hear pure tones in each ear. Simple tests, such as the ones done at work, may be useful for screening. But a valid audiogram is necessary to accurately diagnose most hearing problems and determine the amount of impairment.
- Tympanogram - The tympanogram measures how easily the eardrum vibrates back and forth and at what pressure the vibration is the easiest. The middle ear is normally filled with air at the same pressure as the surrounding atmosphere. If the middle ear is filled with fluid, the eardrum won't vibrate properly, and the tympanogram will be flat. If the middle ear is filled with air but at a higher or lower pressure than the surrounding atmosphere, the tympanogram will be shifted in its position. The tympanogram is conducted by placing a special probe against the ear canal (like an earplug), and the equipment automatically makes the measurements. This test determines the functionality of the tympanic membrane by observing its responses to waves of pressure and measuring the pressure of the middle ear.

- **Auditory Brain Stem Response (ABR)** - The ABR is a special hearing test that can track nerve signals from the inner ear through the auditory nerve to the region of the brain responsible for hearing. The test can show where, along that path, the hearing loss has occurred. For example, the ABR is often used for a worker with a sensorineural loss in just one ear. This loss can sometimes be caused by a benign tumor on the auditory nerve. If the ABR is normal along that region of the path, the chances of having this tumor are small. A small speaker which produces a clicking sound is placed near the ear. Special electrodes automatically record the nerve signal. The ABR requires no conscious response from the worker being tested. The worker can even sleep during the testing. It's helpful in evaluating suspected peripheral hearing loss, cerebellopontine angle lesions, brainstem tumors, infarctions, and multiple sclerosis. It's also used to evaluate the mechanisms of coma and in monitoring the cause of disorders associated with coma. ABR requires preauthorization.
- **Electronystagmography (ENG)** - The ENG is a test of the balance mechanism of the inner ear. It's a graphic recording of eye movements. Metal electrodes are attached around the eye. Standard caloric stimulation test is performed, with cold or hot water put in the ear canal. Each ear is tested separately. The electrodes record the duration and speed of eye movements that occur when the inner ear is stimulated. This test provides exact measurements of the eye movements and can record behind closed eyelids or with the head in a variety of positions. The test is performed by an audiologist and interpreted by an otolaryngologist (ear, nose, and throat specialist, ENT). ENG is used to determine if ear nerve damage is a cause of dizziness or vertigo. It's performed to evaluate the acoustic nerve which provides hearing and helps with balance. This study aids in the differential diagnoses of lesions in the brainstem and cerebellum, unilateral hearing loss of unknown origin, and helps identify the cause of vertigo or ringing in the ears. ENG requires preauthorization.

Audiograms

Audiograms chart the sequence of tones that have been used to measure hearing thresholds. A hearing threshold is a measure of the softest sounds that a human can hear at various pitches.

A valid audiogram is needed to determine what type of hearing loss is present and if it is due to excessive noise exposure. In routine testing, some voluntary response from the patient is necessary to indicate that he or she hears the sound used to test hearing. The sound may be a word, a sentence, a pure tone, a noise or even the blast of a loud horn. The patient's response may consist of raising his or her finger or hand, pressing a button or answering a question. The test sound is reduced in intensity until the patient hears it approximately 50 percent of the times it is presented. The intensity level at which a patient just hears the sound is called the threshold of hearing.

To be considered valid, an audiogram must be:

- Preceded by at least 14 hours without exposure to high levels of noise (occupational or non-occupational); and

- Performed by a licensed or certified audiologist, an otolaryngologist or other qualified provider, or by a certified technician responsible to one of the above; and
- Performed in a sound-attenuated room; and
- Obtained from equipment calibrated to current ANSI (American National Standards Institute) standards.

Testing may be done either by air conduction (transmitted through air) or bone conduction. The department uses unmasked air conduction audiogram findings to calculate permanent impairment. There are times when a doctor states that the readings from the bone conduction audiogram more correctly reflect the permanent impairment. If the doctor provides a good basis for his or her opinion, the bone conduction readings can be used.

Which Audiogram to Use

If a worker is still being exposed to injurious occupational noise at the employer of record, the most recent valid audiogram is used to determine permanent impairment.

If a worker is not currently being exposed to injurious occupational noise, or has changed employers since filing the claim, the first valid audiogram performed closest to the date of last injurious exposure is used. However, if a subsequent valid audiogram shows a lower percentage of hearing loss, that audiogram is used.

Reading the Audiogram and Calculating the Loss

In order to calculate the amount of permanent impairment, the claims manager takes the readings from the appropriate audiogram. The audiogram is read at the 500 Hz, 1000 Hz, 2000 Hz and 3000 Hz levels for each ear. The readings are then applied to a formula as recommended by the American Medical Association's Guide to the Evaluation of Permanent Impairment.

When reviewing the audiogram, "X" is the reading for the left ear and "O" is the reading for the right ear. The loss in each ear is calculated separately and the total loss in each ear is then combined to calculate the binaural hearing loss.

To calculate the hearing loss, the following steps are taken for each ear:

1. The readings at 500 Hz, 1000 Hz, 2000 Hz and 3000 Hz are added together and then divided by 4 to get an average reading.
2. Subtract 25 from the results of step number 1.
3. Multiply the results of step number 2 by 1.5.

4. This will give you the total hearing loss in each ear. If only one ear shows loss, you are done. We do not calculate a binaural loss when there is loss in only one ear.

If there is loss in both ears, the following steps are taken in order to calculate the binaural loss:

5. The percentage of loss in the better ear is multiplied by 5.
6. The percentage of loss in the worse ear is added to the results of step number 4.
7. The result of step number 5 is divided by 6. This will give you the percentage of binaural hearing loss.

Tinnitus

Tinnitus is ratable for occupational hearing loss only if there is an otherwise compensable loss. (Note: If tinnitus results from an industrial injury, the department will accept a rating with or without an otherwise compensable hearing loss.)

Disease Based Hearing Loss

There are several diagnoses that may be encountered when reviewing a medical report for occupational hearing loss. These diagnoses are Acoustic Neuroma, Meniere's Disease and Otosclerosis. While these are not all of the causes of disease based hearing loss, they are the most common. If a doctor indicates that a portion of the hearing loss is due to occupational noise exposure and a portion is due to disease, the disease based percentage should be segregated out.

Liabile Insurer

The question of whether the State Fund or a self-insured employer is liable for a claim is determined on the basis of the carrier on the date of last injurious exposure. Medical opinion must be used to determine if an exposure was injurious.

Occupational Diseases in Fire Fighters [RCW 51.32.185](#)

In 1987, the legislature recognized that fire fighters have a higher rate of respiratory disease than the general public. [RCW 51.32.185](#) established the prima facie presumption that a fire fighter's respiratory disease is an occupational disease. Heart problems, some cancers, and some infectious disease have been added to the conditions presumed related to fire fighters' work exposure.

Presumption of Coverage

A fire fighter's claim is likely to be allowable as an occupational disease when it's filed for a:

- Respiratory disease,
- Infectious disease or cancer listed in the law, or
- Heart problem within 72 hours of exposure to toxic substances or within 24 hours of strenuous physical exertion due to fire fighting activities.

After fire fighting employment ends, coverage is extended for three calendar months for each year of service, up to a maximum of 60 months from the date last employed.

Effective June 13, 2002

For fire fighter's claims received from June 13, 2002 through July 21, 2007, the prima facie presumption for occupational disease includes only:

- Respiratory disease.
- Heart problems experienced within 72 hours of exposure to smoke, fumes, or toxic substances.
- Certain types of cancer (ureter, kidney, bladder, or primary brain cancer, leukemia, malignant melanoma, and non-Hodgkin's lymphoma).
- Certain infectious diseases (hepatitis, meningococcal meningitis, mycobacterium tuberculosis, and HIV/AIDS).

Effective July 22, 2007

For fire fighters' claims received on or after July 22, 2007, the prima facie presumption was expanded again. The presumption of coverage now includes all of the following as occupational diseases:

- Respiratory disease.
- Heart problems experienced within 72 hours of exposure to smoke, fumes, or toxic substances or within 24 hours of strenuous physical exertion due to fire fighting activities.
- Fire fighting activities are fire suppression, fire prevention, emergency medical services, rescue operations, hazardous materials response, aircraft rescue, training, and other assigned duties related to emergency response.
- Certain types of cancer (prostate cancer diagnosed before the age of 50, ureter, kidney, bladder, colorectal, testicular, or primary brain cancer, leukemia, malignant melanoma, multiple myeloma, and non-Hodgkin's lymphoma).
- Certain infectious diseases (hepatitis, meningococcal meningitis, mycobacterium tuberculosis, and HIV/AIDS).

Challenge to Presumption of Coverage

The presumption of coverage can be challenged by the majority of evidence. The majority of evidence may show the disease didn't result from workplace exposure. Instead, the disease resulted from, for example, the fire fighter's:

- Use of tobacco products.
- Physical fitness and weight.
- Lifestyle.
- Hereditary factors.
- Exposure from activities unrelated to work as a fire fighter.

For claims filed on or after July 1, 2008, the presumption of coverage doesn't apply for heart or lung conditions if the fire fighter is a current smoker, and it may not apply if the fire fighter is a former smoker. If the presumption doesn't apply, the claim isn't automatically rejected. The burden is on the fire fighter to prove the condition is an occupational disease.

Legal Fees [RCW 51.32.185](#)

When the presumption determination on claims received on or after July 22, 2007 prevails and the Board of Industrial Insurance Appeals or higher court, the opposing party must pay appeal costs, including attorney and witness fees, to the fire fighter or beneficiary.

Special Situations

Repair or Replacement of Personal Items [RCW 51.32.260](#)

For injuries occurring on or after July 24, 1983, a worker may be reimbursed for replacing or repairing personal clothing, and protective equipment, such as safety glasses or footwear. However, these must be lost or damaged due to an allowable injury or during emergency treatment for the allowable injury.

A claim is not allowable if it is filed for only repair or replacement of clothing, equipment, or footwear where no personal injury was sustained.

Note: Personal items, such as jewelry or watches lost or damaged as a result of an injury or during emergency treatment for injuries, are not covered.

Glasses, Hearing Aids, Contact Lenses and Artificial Appliances [RCW 51.36.020](#)

Glasses, contact lenses, hearing aids and artificial appliances are covered if they are damaged during an industrial accident. An industrial accident is an unexpected happening arising in the course of employment that results in damage to an artificial member, such as a prosthesis.

These items are considered part of the body when they are being used. For example, glasses and contact lenses are considered extensions of a worker's eyes and are referred to as bodily substitutes. Unused eyeglasses or contact lenses that are lost or damaged are considered personal property and are not covered, for example, when a worker wears glasses on top of his or her head.

Groin Strain

Problems have developed with accepting the diagnosis of groin strains on new claims. It is difficult for the attending doctor to define a specific injury to this area because of the many muscles, ligaments, and glands involved. Therefore, the diagnosis of groin strain will be accepted when there is no evidence of a definite hernia but the injured worker has sustained an allowable injury at a specific time and place in the course of employment.

Psychiatric Injury Claims

A psychiatric injury claim is a psychiatric condition resulting from a specific traumatic event in the absence of a physical injury. An example of an allowable psychiatric injury claim would be a window washer who watches his partner take a fatal fall. If a psychiatric condition results from witnessing this incident, it would be considered an allowable injury claim.

Exposure to Heat and Cold

A claim for exposure to heat and cold may be allowable when the exposure is greater than that of the general public. Some examples are sunstroke, sunburn, heat prostration, frostbite, hypothermia and other effects of exposure to heat and cold. These claims are adjudicated as injury, rather than occupational disease, claims. The exposure is generally a one-time, specific incident or occurs over the course of one day. An example would be a roofer spreading hot tar on a 90-degree day and is diagnosed with sunstroke.

Carpal Tunnel Syndrome

This condition involves a compression of or pressure on the median nerve as it passes through an opening at the wrist called the carpal tunnel. The tunnel is a rigid structure formed by the carpal bones and roofed by the thick, transverse carpal ligament. Pressure on the nerve produces weakness and atrophy affecting the thumb, index, middle, and a portion of the ring finger in later stages of the condition. Common symptoms include numbness in the fingers and pain in the palm

area that comes on during sleep and awakens the individual. Treatment may include injections, splinting, or surgical division of the transverse carpal ligament to relieve the pressure. The origin of the narrowed tunnel may be congenital, due to thickening of the connective tissue, inflammation secondary to overuse, infection, direct blunt trauma, or it may be idiopathic (without known cause).

Where existence of the condition is contended due to a traumatic event, the claim should be handled as any other trauma injury claim.

In cases where there is no description of an overt injury, the claims manager should request, from the attending provider, a reasonable anatomical and pathological basis for causal relationship between the worker's condition and his/her occupational activities.

Where a given claim meets the criteria for allowance, as discussed above, the claim should either be allowed specifically as an injury or as an occupational disease.

If the claim for a condition of this nature is to be rejected, the failure of the condition to meet the definitions of an injury and an occupational disease should be included in any order.

Thoracic Outlet Syndrome

Thoracic outlet syndrome is a condition that involves a compression or impingement of arteries, veins (vascular), or nerves (neurogenic) between the base of the neck and the armpit. Thoracic outlet syndrome symptoms in the shoulder and arm may include swelling, pain, numbness, or impaired circulation to the extremities (causing discoloration).

Thoracic outlet syndrome as an injury

The most easily identifiable cause of a thoracic outlet syndrome claim is a traumatic incident at work. Examples include:

- A torn scalene muscle from a shoulder seatbelt during a motor vehicle accident. Scar tissue could form in the muscle and compress the nerves and blood vessels
- A direct or crushing blow to the chest or clavicle. A clavicle fracture could decrease the area needed for the vessels to function properly and cause vascular compression.

Thoracic outlet syndrome as an occupational disease

Thoracic outlet syndrome may be contended as an occupational disease. The compression could result from repetitive or overuse activities. The compression could also result from poor posture. The claims manager should ask the doctor if the thoracic outlet syndrome is related to the worker's job duties on a more probable than not basis.

Hemorrhoids

Hemorrhoids are common. Most people will experience them sometime in their lives. Hemorrhoids are enlarged veins in swollen tissue inside the anus. Periodic flare-up of symptoms

may be due to irritation or other causes and is generally treated conservatively. A severe case involving a blood clot may require surgery.

Hemorrhoids may be caused by injury. In the absence of direct trauma, a claim contending hemorrhoids caused by lifting or straining is not considered valid unless there is documentation of a preexisting asymptomatic hemorrhoid condition. Preexisting hemorrhoids may be aggravated or lit up by lifting or straining. Without documentation of preexisting hemorrhoids, medical opinion contending a causal relationship to lifting or straining should be questioned.

Epididymitis

The epididymis is a tube-shaped structure contained in the scrotal sack that carries sperm from the testicle to the spermatic duct. Infections of one or both tubes (epididymitis) are common. A claim is allowable when there is evidence of direct trauma to the area or if the infection results from an accepted surgery in a proximate site.

In the absence of direct trauma, a claim contending epididymitis caused by heavy lifting or straining is not considered valid unless there is documentation of a preexisting lower urinary tract infection or prostatitis. When one of these preexisting conditions exists, heavy lifting or straining may force contaminated urine or bacteria-containing secretions into the epididymis and cause epididymitis. Without documentation of these preexisting conditions, medical opinion showing a causal relationship to heavy lifting or straining should be questioned.

Filing an Infectious Disease Claim [RCW 51.36.010](#), [WAC 296-20-03005](#)

A health care worker who files a claim and seeks treatment for an injury such as a needle stick or laceration has an allowable claim since the incident meets the legal definition of an industrial injury. Since the incident may also have exposed the worker to an infectious disease, the claim should be allowed and any necessary medical treatment should be authorized for both the injury itself and for and post-exposure, preventive treatment.

Infectious disease exposure claims are not allowed if a worker did not suffer an injury or contract an occupational disease as defined by law. When a claim is filed for a probable exposure (i.e., a first responder exposed to meningitis, a nurse splashed with blood or other body fluids, etc.) the claim would be denied but post-exposure testing and treatment should be authorized. If the worker later tests positive for disease they can complete a new Self-Insurer Accident Report (SIF-2) and file a new claim. Treatment authorization for infectious diseases is covered in the [Medical Treatment](#) chapter under Infectious Diseases.

Plantar Fasciitis

The plantar fascia is a broad, fibrous tissue or ligament that extends from the heel bone (calcaneous) to the toes (metatarsals). The purpose of the plantar fascia is to support the arch and stabilize it during normal weight bearing.

Plantar Fasciitis is an inflammation of the plantar fascial attachment to the anterior processes of the heel bone. The term “heel-spurs” has been used in the past; however, such spurs may or may not be present in plantar fasciitis. Plantar fasciitis often presents as a dull, deep, ache-like pain on the plantar surface of the heel.

Plantar fasciitis may be a work-related condition when caused by a specific trauma to the heel (i.e. jumping from a high object). Plantar fasciitis is unlikely to be allowable as an occupational disease when caused by specific walking surfaces (cement floors), long periods of standing or walking, shoe wear, or repetitive foot motion.

Fibromyalgia

Fibromyalgia is not accepted as an industrial injury or occupational disease (*Grant v. Boccia*). Aggravation to a pre-existing fibromyalgia condition will not be accepted as there is no sufficient medical data to establish a causal relationship between an injury/or occupational disease and worsening of a pre-existing fibromyalgia condition.

As with other conditions not causally related to the industrial injury, treatment for fibromyalgia may be authorized as an aid to recovery ([WAC 296-20-055](#)). Temporary treatment can be authorized when all of the following conditions are met:

- The accepted industrial injury is not stable.
- Fibromyalgia is directly retarding recovery of the accepted condition.
- The required documentation is submitted (see authorization and documentation requirements below).

Treatment as an aid to recovery should not be authorized for longer than 90 calendar days. If the worker has reached maximum recovery from the accepted industrial injury or occupational disease prior to the 90-day period, the fibromyalgia treatment will be terminated at that time.

Treatment authorization requirements for fibromyalgia

The provider must obtain prior authorization for treatment. To request prior authorization, the provider must submit the following in writing to the department or self-insurer:

- Adequate documentation that the worker’s diagnosis of fibromyalgia meets the American College of Rheumatology’s (ACR) 1990 Criteria for the Classification of Fibromyalgia.
- An explanation of how fibromyalgia, as an unrelated condition, is affecting the accepted industrial condition, and
- A treatment plan.

When treating an unrelated condition, the attending provider must submit a report every 30 days outlining the effect of the treatment on both the unrelated and the accepted industrial conditions.

Cardiovascular Injuries

The Washington State Supreme Court has determined that a different test should be applied to claims for “heart” injuries than the one applied to the musculoskeletal system described earlier in this chapter.

In *Windust v. Dept. of L&I*, the leading decision in this area, the court held that, in order for a “heart attack” or myocardial infarction (MI) to be compensable must have resulted from “unusual exertion” on the part of the worker, regardless of the prior condition of that worker’s cardiovascular system. For example, if a worker is normally employed lifting 50-pound bags of feed on a regular basis during the normal work week and that worker suffers myocardial infarction while lifting one of the bags, the condition would not be compensable, even if medically certified as being causally related to that event.

If the same worker were to receive a special assignment for one day lifting 100-pound bags of feed and a MI occurred while lifting one, and medical certification of a causal relationship is present, the claim would normally be accepted. If the worker normally lifted the 100-pound bags one day each week, the claim probably would not be accepted.

The court later stated in *Kruse v. Dept. of L&I* that:

In order to support a claim under the statute, there must be evidence of a sudden and tangible happening of a traumatic nature. The exertion required in the normal routine duties of a job is not, in itself, an injury within the purview of the statute. There must be some unusual strain placed upon the workman by the work he is called upon to perform which is the cause of his injury or death before compensation can be awarded.

To properly adjudicate the claim, the duties of the job for which the worker was hired and the amount of exertion expended on a day-to-day basis to accomplish his/her work must be known. It must be determined whether, on the day the worker collapsed, he/she had engaged in any physical activity on the job which required the expenditure of more exertion than that normally required to accomplish the job. The investigation should include the work duties of the worker’s job, how long he/she had been so employed and, specifically, what the worker had been doing on the date of the alleged cardiac injury. If the worker suffered the alleged cardiac injury on the first day or during the first week on a new job, the investigation should include:

- Where the worker was last employed.
- The exact duties of the prior job and the amount of exertion required to perform that job.
- How that exertion compares with the exertion required on the present job.

An extended period of unemployment should be reported.

Do not contact the worker's family unless a claim is filed. Try to get information in as much detail as possible from co-workers, foreman, superintendent, employer, etc. All persons interviewed should be fully identified.

An employee who has no history of definite traumatic incident will be considered to have possibly died of a cardiac arrest if:

- He/she collapses on the job and dies immediately.
- He/she is dead on arrival at the hospital (DOA).
- He/she dies after admission to a hospital.

An investigation will establish exactly what happened and specifically what the worker was doing at or shortly prior to the time of collapse. An investigation should be performed as soon as possible while the events prior to the collapse are fresh in the minds of co-workers and available witnesses. (See *Boeing Co. v. Fine*, *Louderback v. Dept. of L&I*, and *Southerland v. Dept. of L&I* for additional case law.)

Guidelines for Investigation of Cardiovascular Injuries

(1) Describe the worker's physical activities on the job from the time he/she reported for work until the time of the heart attack.

- Was the worker engaged in physical activities beyond those usually required for the job? This should encompass four days prior to the date of the occurrence. Describe this physical activity.
- Did the worker previously engage in the type of activity frequently without symptoms?

(2) Try to get a description of the onset of the worker's pain.

- The bodily distribution.
- The duration.
- Whether any medication was taken to relieve it.
- Whether he/she had this pain before.
- Worker's description of any other type of pain.

Had the worker had similar discomfort prior to the attack?

- (3) Try to get a description of the worker's appearance prior to, during, and after the attack. This can probably be best obtained from co-workers.
- Did he/she appear tired on arrival at work?
 - Did he/she describe any feelings of undue fatigue?
 - At the onset, did he/she appear pale, sweaty, flushed, clutch at his/her chest, or appear "frozen" in one position?
- (4) Get a description of the worker's usual job-related activities including any known daily, weekly, or monthly fluctuation in workload. The employer may have a written job specification.
- (5) In describing any unusual activity of the worker prior to the attack, find out what time period and to what degree the physical strain extended.
- How much was lifted – how often and how far?
 - How far did he/she climb – ladder, stairs, etc.?
 - How far did he/she walk? Was he/she carrying anything? If so, describe the object.
 - Describe the work area, including temperature and ventilation, if appropriate. Find out the actual conditions at the time of the heart attack.
- (6) Could the worker be described as appearing in the "best of health" prior to the heart attack?
- Determine if the worker was taking any medication. If so, try to learn what type.
 - Was the worker overweight?
 - Did the worker smoke regularly? How much?
 - Did the employer require a physical examination at the time of hire? If so, who performed the exam and on what date?
 - Try to learn the worker's eating habits.
- (7) What off-the-job activities were involved?
- What sports did he/she participate in and to what degree?
 - Was the worker under-active? Chronically inactive off the job?

(8) Had the worker been receiving treatment or medication for any medical condition?

- Heart disease or condition.
- High blood pressure.
- Low blood pressure.
- Diabetes.
- Was he/she under treatment for control other than diet?
- High blood cholesterol levels.

If the worker had been receiving treatment for any of these conditions, obtain the dates, name of provider and/or hospital, etc.

(9) Had the worker been advised to reduce his/her physical activity level?

(10) Did the worker ever complain to co-workers, supervisor, etc., of undue fatigue, chest pain, shortness of breath, or chest constriction after meals or on sudden exposure to cold, either in on-the-job or off-the-job activities?

(11) When the worker was hired, had he/she been under treatment for any type of heart condition?

(12) During the worker's employment, did the employer have any reason to suspect a heart condition? If so, learn why, when, worker's symptoms and appearance, etc.

Lead Poisoning

Because of a widespread distribution of lead, both naturally and through use by industry in various manufacturing processes, no lead-free environment exists. In polluted areas, such as the central districts of large cities, contamination of the general environment has increased the background exposure (at least for certain population groups) to such an extent that it may decrease the tolerance to occupational exposure. In other workers, occupations that at one time were considered to be relatively safe may prove hazardous by reasons of the additional burden that environmental exposure may impose.

The following lead levels may be considered a general guide:

Less than 60 mcg Lead per 100 ml Blood or 1000 ml Urine	Safe in practically all cases.
60-80 mcg Lead per 100 ml Blood or 1000 ml Urine	Tolerable. No action required, unless the individual shows signs and symptoms (i.e., is hypersensitive).
80-120 mcg Lead per 100 ml Blood or 1000 ml Urine	About 10% of workers are likely to develop early signs and symptoms of lead toxicity if these elevated levels continue.
120-200 mcg Lead per 100 ml Blood or 1000 ml Urine	Up to 60% of workers are likely to show or develop signs and symptoms of lead toxicity. Some may be quite seriously (though reversibly) affected.
Over 200 mcg Lead per 100 ml Blood or 1000 ml Urine	Most persons will show or develop signs and symptoms of serious (though reversible) lead toxicity (e.g., anemia, weakness, cramps).

The following laboratory tests, in addition to blood and urine lead level testing are considered specific for lead poisoning:

- (1) Depression of ALA enzyme activity in blood.
- (2) Increased excretion of ALA in the urine.
- (3) Accumulation of erythrocyte protoporphrin in the blood.
- (4) Appearance of coproporphyrin 111 in the urine.

In considering claim validity, the following should be taken into account:

- Documentation of the degree and duration of exposure.
- Accurate history of subjective symptoms.
- Description of discrete and typical findings.
- A combination of any three of the four ancillary laboratory tests (in addition to the traditional blood lead level).

If claims are received without this information, contact the attending provider and request that he/she supply the missing data.

Workers kept from their jobs because of elevated blood lead levels are subject to a regulation enacted by the Division of Occupational Safety and Health (DOSH). This regulation requires that they be placed in other unexposed jobs at no loss in pay, seniority or other employment rights until their blood levels fall to acceptable limits. In view of this, claims for lead exposure should not entail time loss from work, and contentions of entitlement to time loss benefits should first be clarified.