

Out of province coverage

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OBJECTIVE

1. This practice directive provides direction on the exercise and administration of the Board’s authority under section 8 of the *Workers Compensation Act* and section 4 of the *Fishing Industry Regulations*.

INTERPRETATIVE GUIDELINES

2. Section 2(1) of the *Act* states:

This Part applies to all employers, as employers, and all workers in British Columbia except employers or workers exempted by order of the board.

3. Of particular importance for the purposes of this practice directive is section 2(1)’s plain direction that Part 1 of the *Act* only applies to “workers in British Columbia”; for this imposes a territorial limitation on entitlement to compensation, such that only a worker in British Columbia is entitled to compensation.
4. Thus, if an individual is injured while “working elsewhere than in the Province,” it is not sufficient that the individual has entered into a contract of service which would satisfy the definition of worker under section 1 of the *Act* and that the worker has sustained an injury arising out of and in the course of employment; the criteria under section 8(1) of the *Act* must also be met. In the main, the satisfaction of the section 8(1) criteria establishes a sufficient connection between the contract of service and the Province to bring the matter within the jurisdiction of the Board.

Further guidance of the Board’s interpretation of section 8 can be found in Compensation Practice’s *Practice Directive #C15-1, Out-of-Province Injuries*, 12 October 2005 (as revised from time to time).

ADJUDICATIVE GUIDELINES

I SECTION 8(1) OF THE ACT

5. Section 8(1) of the *Act* states:

8(1) Where the injury of a worker occurs while the worker is working elsewhere than in the Province which would entitle the worker or the worker's dependants to compensation under this Part if it occurred in the Province, the Board must pay compensation under this Part if

- (a) a place of business of the employer is situate in the Province;*
- (b) the residence and usual place of employment of the worker are in the Province;*
- (c) the employment is such that the worker is required to work both in and out of the Province; and*
- (d) the employment of the worker out of the Province has immediately followed the worker's employment by the same employer within the Province and has lasted less than 6 months,*

but not otherwise.

6. Section 8(1) of the *Act* is a permissive provision that extends coverage to an individual who satisfies the definition of worker under section 1 of the *Act* and who is injured outside the Province. However, this extension of coverage is only permissible if the individual meets each of the four branches of the conjunctive test set forth in section 8(1).

A “a place of business of the employer is situate in the Province”

7. Generally a “place of business” is an establishment (a premise, facility, installation, etc.) where business is conducted, goods are made or stored or processed, or where services are rendered.

B “the residence and usual place of employment of the worker are in the Province”

8. For these purposes,

- “Residence” means a housing unit in British Columbia that was occupied by the individual during service to the employer as his or her primary place of residence. In determining residence, it is worthwhile to recall that Canadian courts have held that,

*“an individual is resident in the place where he, in the settled routine of his life, regularly, normally or customarily lives. That quality is chiefly a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living.”*¹

- “Usual place of employment” means where the individual customarily discharges the substance of the commercial, industrial, or professional activity the individual has contracted to provide.

C “the worker is required to work both in and out of the Province”

9. Generally, this branch of the test requires that the out-of-province component of the employment is within the explicit terms of the contract of service.

D “employment ... out of the Province has immediately followed the worker's employment by the same employer within the Province and has lasted less than 6 months”

10. The employment relates to the substance of the commercial, industrial, or professional activity the individual has contracted to provide.

II SECTION 4 OF THE FISHING INDUSTRY REGULATIONS

11. Section 4 of the *Regulations* states:

Section 8 of Part 1 does not apply to commercial fishers.

12. Section 4 of the *Regulations* must be interpreted in accordance with the stated statutory intent that all commercial fishers must as far as possible receive the benefit of and be subject to Part 1 of the *Act*. Thus, section 4 is interpreted to direct that a workers’ compensation claim by a commercial fisher who suffers injury or death outside of British Columbia while pursuing work-related activities, may be accepted by the Board without regard to the requirements of section 8 of the *Act*.²

III WORK EXCHANGE PROGRAMS

13. Generally, a British Columbia worker participating in an interjurisdictional work exchange program is not covered under the *Act* because the employment is not such that the worker is required to work both in and outside of British Columbia.

¹ Rand J. in *Thomson v. The Minister of National Revenue*, [1946] S.C.R. 209 at 225.

² See *WCAT Decision Number: WCAT-2005-02044*, 22 April 2005.

14. Generally, an individual from outside of British Columbia participating in an interjurisdictional work exchange program is a worker under the *Act* regardless of whether the individual is paid by an out-of-jurisdiction entity. The individual's employer in British Columbia must report and remit for the payroll attributable to the individual.