
Policy

Loss of Earnings

When calculating loss of earnings (LOE) benefits, the amount of net average earnings the worker is able to earn in a suitable occupation after the injury **must reflect** any disability payments paid to the worker under the Canada/Quebec Pension Plan (CPP/QPP) in respect of the injury.

Future Economic Loss

When calculating future economic loss (FEL) benefits and determining the amount of net average earnings the worker is able to earn in a suitable occupation after the injury, the WSIB **must have regard** to any disability payments the worker may receive for the injury under the CPP/QPP.

When a worker receives CPP/QPP disability benefits and WSIB FEL/LOE benefits, the WSIB offsets 100% of the CPP/QPP disability benefits paid in relation to the work-related injury/disease from the FEL/LOE benefits.

Purpose

The purpose of this policy is to outline when CPP/QPP disability benefits are offset from FEL/LOE benefits.

Guidelines

This policy should be read in conjunction with 18-03-02, Payment and Reviewing LOE Benefits (Prior to Final Review) and/or 18-04-14, Reviewing FEL Benefits (Prior to Final Review).

All references to CPP disability benefits in this document are also meant to refer to QPP disability benefits.

Definition

CPP disability benefits are monthly benefits paid by the federal government to individuals who have a disability which prevents them from working at any job on a regular basis. The disability may be caused by work-related or non-work-related injuries, diseases, or a combination of several injuries/diseases.

Benefits affected

The WSIB offsets CPP disability benefits from FEL/LOE benefits when it:

- determines that the worker is not able to work (100% FEL/LOE benefits), or
- determines that the worker is able to work (partial FEL/LOE benefits) but has not returned to the labour force (e.g., in some cases the work-related injury/disease does not prevent

the worker from returning to the labour force, but they have non-work-related injuries/diseases that prevent a return to work). For further information about determining, see 18-03-02, Payment and Reviewing LOE Benefits (Prior to Final Review), 18-04-14, Reviewing FEL Benefits (Prior to Final Review), or 19-02-10, RTW Assessments and Plans.

Generally, a worker who has returned to work would not be entitled to CPP disability benefits and therefore an offset from WSIB benefits would not be required.

Benefits not affected

CPP disability benefits are not offset from a FEL supplement.

CPP disability benefits are not used to offset LOE benefits while a worker is co-operating in return-to-work (RTW) activities.

Reporting CPP disability benefits

Workers who are receiving FEL/LOE benefits, or who may be entitled to receive such benefits, must notify the WSIB within 10 days of being notified they are entitled to CPP disability benefits, see 22-01-02, Material Change in Circumstances - Worker. The date the worker is notified by the federal government of entitlement is the date of the material change (i.e., the date on the notification of entitlement letter).

When to offset CPP disability benefits

For FEL/LOE benefits prior to the final review, the WSIB starts offsetting CPP disability benefits from the date the worker is notified that they are entitled to monthly CPP disability benefits whether this change is reported on time or not.

If the worker is granted retroactive CPP disability benefits (i.e., benefits payable prior to the date of notification of entitlement by the federal government), the retroactive CPP disability benefits are not offset from any past or future WSIB benefits.

If the date of notification of entitlement to CPP disability benefits occurs after the final review, the WSIB may only offset the CPP disability benefits from the FEL/LOE benefits in exceptional cases.

Exceptions

The WSIB may review the FEL/LOE benefits after the final review if the worker suffers a significant deterioration in their work-related condition, see 18-03-06, Final LOE Benefit Review or 18-04-20, Final FEL Benefit Review. In these cases, the receipt of CPP disability benefits is considered when reviewing the FEL/LOE benefits.

Transitional Cases - significant deterioration prior to July 1, 2007

The WSIB can only review the FEL/LOE benefits after the final review if the worker suffers a significant deterioration in their work-related condition, which is confirmed by a NEL redetermination occurring on or after November 26, 2002.

The date of notification of entitlement to CPP disability benefits must be considered when offsetting these benefits from FEL/LOE benefits reviewed as the result of a significant deterioration.

Amount of offset

When calculating FEL/LOE benefits, the WSIB generally offsets 100% of any CPP disability benefits paid to a worker in relation to the work-related injury/disease. The WSIB does not offset the CPP disability benefits paid to the children of workers who are receiving CPP disability benefits and FEL/LOE benefits.

The WSIB only offsets an amount which is less than 100% of CPP disability benefits when the CPP disability benefits are being paid to the worker for a combination of work-related and non-work-related injuries/diseases, see Apportioning CPP disability benefits, below.

Steps for calculating a CPP disability benefits offset

To calculate a CPP offset, the WSIB identifies a worker's:

- pre-injury net average earnings (NAE)
- gross post-injury determined earnings (e.g., \$0 if receiving 100% FEL/LOE), and
- gross CPP disability benefits paid in relation to the work-related injury/disease.

The WSIB considers CPP disability benefits as post-injury earnings. Therefore, the amount of the gross CPP disability benefits, which **exceed** the amount the worker is determined to be able to earn after the injury, is added to the gross post-injury determined earnings prior to determining the post-injury NAE. If the gross CPP disability benefits are **less** than the gross post-injury determined earnings, \$0 CPP disability benefits would be added to the gross post-injury determined earnings.

Benefit type and formula for calculating CPP disability benefits offset

Benefit type	Calculation formula
LOE	$85\% \times (\text{pre-injury NAE} - [\{\text{gross post-injury determined earnings} + \text{portion of gross CPP disability benefits exceeding determined earnings} - \text{tax deductions}\}])$
FEL	$90\% \times (\text{pre-injury NAE} - [\{\text{gross post-injury determined earnings} + \text{portion of gross CPP disability benefits exceeding determined earnings} - \text{tax deductions}\}])$

Scenario 1 - Worker receiving 100% FEL/LOE benefits

The examples shown represent LOE benefits, however, the same formula is used for FEL benefits, except 90% of wage loss is paid. All examples are for illustration purposes only.

Example: Full LOE

- Worker is injured on April 17, 2003
- WSIB grants entitlement to 100% LOE benefits from April 18, 2003 onward
- Worker is notified of entitlement to CPP disability benefits on October 25, 2004
- Gross pre-injury earnings \$675.67/week, NAE = \$505.24/week
- Gross post-injury determined earnings \$0/week
- Gross CPP disability benefits \$211.71/week, tax deductions of \$23.61/week

Step 1 - Determine post-injury earnings

- Compare gross post-injury determined earnings of \$0/week, to gross CPP disability benefits of \$211.71/week, to determine if any amount of the CPP disability benefits exceed the determined earnings and therefore need to be considered as gross post-injury earnings.
- In this example, there are no gross post-injury determined earnings, so the entire CPP disability benefits are considered gross post-injury earnings.

Step 2 - Calculate full LOE using the CPP offset formula

$85\% \times (\text{pre-injury NAE} - [(\text{gross post-injury determined earnings} + \text{portion of gross CPP disability benefits exceeding determined earnings}) - \text{tax deductions}]) = \text{full LOE benefits}$

$$85\% \times (\$505.24 - [(\$0 \text{ determined} + \$211.71 \text{ CPP}) - \$23.61]) = \$269.57/\text{week full LOE}$$

Scenario 2 - Worker receiving partial FEL/LOE benefits**Example: CPP disability benefits are less than gross post-injury determined earnings**

- Worker is injured on April 17, 2003
- WSIB grants entitlement to LOE benefits from April 18, 2003 onward
- Worker is determined able to work by WSIB on November 7, 2004
- Worker is notified of entitlement to CPP disability benefits on October 25, 2004
- Gross pre-injury earnings \$675.67/week, NAE = \$505.24/week
- Gross post-injury determined earnings \$360.00/week, tax deductions of \$67.81/week
- Gross CPP disability benefits \$211.71/week

Step 1 - Determine post-injury earnings

- Compare gross post-injury determined earnings of \$360.00/week, to gross CPP disability benefits of \$211.71/week, to determine if any amount of the CPP disability benefits exceed the determined earnings and therefore needs to be considered as gross post-injury earnings.

- In this example, the CPP disability benefits do not exceed the determined earnings. The amount to be added to the gross post-injury determined earnings is therefore 0.

Step 2 - Calculate partial LOE using the CPP offset formula

$85\% \times (\text{pre-injury NAE} - [\{\text{gross post-injury determined earnings} + \text{portion of gross CPP disability benefits exceeding determined earnings}\} - \text{tax deductions}]) = \text{partial LOE benefits}$

$85\% \times (\$505.24 - [(\$360.00 \text{ determined} + \$0 \text{ CPP}) - \$67.81]) = \$181.09/\text{week partial LOE}$

Example: CPP disability benefits are more than gross post-injury determined earnings

- Worker is injured on April 17, 2003
- WSIB grants entitlement to LOE benefits from April 18, 2003 onward
- Worker is determined able to work by WSIB on November 7, 2004
- Worker is notified of entitlement to CPP disability benefits on October 25, 2004
- Gross pre-injury earnings \$435.00/week, NAE = \$346.55/week
- Gross post-injury determined earnings \$160.00/week
- Gross CPP disability benefits \$200.00/week

Step 1 - Determine post-injury earnings

- Compare gross post-injury determined earnings of \$160.00/week, to gross CPP disability benefits of \$200.00/week, to determine if any amount of the CPP disability benefits exceed the determined earnings and therefore need to be considered as gross post-injury earnings.
- In this example, the CPP disability benefits exceed the determined earnings. The amount to be added to the gross post-injury determined earnings is \$40.00/week.
- \$160.00/week gross determined earnings + \$40.00/week CPP disability benefits = \$200.00/week gross post-injury earnings, tax deductions of \$19.57/week.

Step 2 - Calculate partial LOE using the CPP offset formula

$85\% \times (\text{pre-injury NAE} - [\{\text{gross post-injury determined earnings} + \text{portion of gross CPP disability benefits exceeding determined earnings}\} - \text{tax deductions}]) = \text{partial LOE benefits}$

$85\% \times (\$346.55 - [(\$160.00 \text{ determined} + \$40.00 \text{ CPP}) - \$19.57]) = \$141.20/\text{week partial LOE}$

Apportioning CPP disability benefits

If the WSIB determines, or if the worker indicates, that CPP disability benefits are being paid for both work-related and non-work-related injuries/diseases, the WSIB reviews any relevant information that may indicate the basis for entitlement to CPP disability benefits (e.g., copy of

the application to CPP and any accompanying health care reports, health care reports in the claim, or letters from CPP).

Based on this information, the WSIB:

- assesses the medical significance of all contributing injuries/diseases (with the assistance of the WSIB medical consultant, if necessary)
- assigns a percentage to each injury/disease based on the medical significance, and
- offsets the percentage of the CPP disability benefits related to the work-related injury/disease.

If the WSIB is unable to determine the medical significance of the injuries/diseases contributing to the allowance of the CPP disability benefits, the WSIB apportions the CPP disability benefits equally between the work-related and non-work-related injuries/diseases.

There is no reduction in the CPP offset if the worker has other work-related injuries/diseases which are contributing to the allowance of the CPP disability benefits.

Multiple claims

Generally, in situations where a worker has multiple WSIB claims, the most recent WSIB claim will be the major contributing factor to CPP disability benefits entitlement and, therefore, the CPP offset will occur in that claim.

However, the severity of the most recent accident giving rise to a WSIB claim, and any prior work-related permanent disabilities/impairments, should be considered when determining in which claim the CPP offset should occur.

If the most recent accident is minor in nature, even if there is a permanent disability/impairment, the CPP offset should occur in the prior claim where there is a significant permanent disability/impairment.

CPP disability benefits should only be offset in one claim and generally cannot be offset in a FEL/LOE claim that is past the final review except in limited circumstances, see **When to offset CPP disability benefits - Exceptions**, above.

Return-to-work plans

A worker may apply for CPP disability benefits at any time during the WSIB claim process. When determining if a worker is entitled to a return-to-work plan, the WSIB will consider the receipt of CPP disability benefits. The application for, or receipt of, such benefits may be an indication that the worker has decided not to return to the workforce, see 19-02-07, RTW Overview and Key Concepts, and 19-02-10, RTW Assessments and Plans.

Appeals or Workplace Safety and Insurance Appeals Tribunal decisions

If FEL/LOE benefits are granted as a result of an Appeals Resolution Officer or Workplace Safety and Insurance Appeals Tribunal (WSIAT) decision, CPP disability benefits may be offset.

When LOE benefits are granted:

- CPP disability benefits are offset from the date of notification of entitlement to CPP disability benefits, as long as the notification occurred prior to the final review.

When FEL benefits are granted for:

- an entitlement period prior to January 1, 1998, CPP disability benefits are offset, having regard for the date of notification of entitlement to CPP disability benefits, from the next set review date
- an entitlement period on or after January 1, 1998, CPP disability benefits are offset, from the date of the material change (e.g., the date of notification of entitlement to CPP disability benefits),

as long as the notification occurred prior to the final review, see 18-04-14, Reviewing FEL Benefits (Prior to Final Review).

In all cases, the retroactive portion of the CPP disability benefits, if any, is not offset. This means the worker's benefits are the same as if they had been granted with the facts available at the time of the original decision.

If FEL/LOE benefits are granted for an entitlement period after the final review, see **When to offset CPP disability benefits - Exceptions**, above.

Application date

This policy applies to all LOE benefits payable for entitlement periods on or after March 1, 2021, for all accidents on or after January 1, 1998.

This policy applies to all FEL benefits payable for entitlement periods on or after March 1, 2021, for accidents from January 2, 1990 to December 31, 1997.

The section entitled "Appeals or Workplace Safety and Insurance Appeals Tribunal decisions" applies to all decisions made on or after March 1, 2021, for all accidents on or after January 2, 1990.

Document History

This document replaces 18-01-13, dated February 15, 2013.

This document was previously published as:
18-01-13 dated August 1, 2007

18-01-13 dated June 1, 2005.

References

Legislative Authority

Workplace Safety and Insurance Act, 1997, as amended
Sections 43, 102, 107

Workers' Compensation Act, R.S.O. 1990, as amended
Sections 37, 43

Minute

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