

COMPENSATION UNDER THE FIRST SCHEDULE OF THE WCA

According to the Annual Report issued by the Workmen's Compensation Commissioner, approximately 230 000 workers are injured on duty each year. Of these, some 13%, i.e. 30 000, suffer some degree of permanent disability.

The Workmen's Compensation Act makes provision for payment for this permanent disability which is calculated in terms of a percentage of the wage earned by the injured worker at the time of the accident. In addition, the worker is compensated for loss of earnings during the period he/she is off work as a result of the accident, at a rate of 75% of his/her wage. (This is known as a temporary disability payment.)

Payments for permanent disability are made in accordance with the First Schedule of the Workmen's Compensation Act, which will be explained in this article. A copy of the First Schedule follows this article.

It is important to note that the Commissioner assesses the degree of disability in accordance with information provided by the examining doctor. The burden therefore rests on the doctor to provide an accurate and fair assessment of the disability, in order that the worker may claim the compensation which is due to him/her.

Assessment of permanent disability

"Disablement" is defined as disablement for employment, or permanent injury, or serious disfigurement.

The Commissioner assesses loss of function as the loss of active movements in degrees, compared to the normal movement of the joint concerned. It is thus very important for the doctor to measure the range of active movement.

In the case of hands and feet, special charts are provided by the Commissioner (Forms WCI 31 and WCI 221).

The method used by the Commissioner is based on the premise that a joint in the neutral (straight) position is at 0 degrees. Measurement into flexion extends up to a theoretical possibility of 180 degrees or 200 degrees, depending on the joint involved. Lack of extension is also lack of movement and should be recorded.

It should be understood that impairment of function is comparable to loss of the limb concerned through amputation.

In assessing disability of hands, it is important to test the patient's power grip and pinch grip.

Loss of sensation is also compensatable - for instance: total loss of palmar sensation is calculated by the Commissioner as equal to 50% of an amputation.

In cases of disfigurement, the Commissioner will often request photographs. In fact, this method is often the best way of showing the degree of disablement.

If the worker's condition deteriorates after his/her case has been finalised by the Commissioner, it is possible to have the case re-opened.

This applies especially in cases where the worker needs further surgery, or where it is thought that the Commissioner has not been notified of all the facts relating to disability. In this event, the patient is required, at his/her own expense, to submit to the Commissioner a detailed medical report. This report should describe in detail his/her condition, and show how this relates to the accident. The report should also indicate the nature of the medical treatment/surgery envisaged.

Upon receipt of this medical report, the Commissioner will consider the matter in conjunction with all other available medical evidence, to determine whether the claim shall be re-opened. When the worker's condition has again become stabilised, a further detailed final medical report has to be submitted to the Commissioner who will then re-assess the worker's degree of permanent disability if necessary.

Compensation amounts paid to the worker

a) Temporary total disablement

Compensation for temporary total disablement is payable at the rate of 75% of a worker's monthly earnings up to R600 of such earnings, plus 50% of the worker's earnings in excess of R600 up to R1 300 of such earnings. Periodical payments shall be made during the period of temporary total disablement at regular intervals of not longer than one month, for a period not exceeding twelve months.

In order to enable the Commissioner to effect periodical payments, it is imperative that regular medical progress reports by the practitioner/specialist who treats the worker, be submitted to the Commissioner.

However, where the employer has paid the worker during the period of absence, compensation for temporary total disablement will be paid to the

employer.

b) Permanent disability

Compensation for permanent disability depends upon the degree of disability. There are two main categories:

- i) If the worker is judged to have 100% disability, he/she will receive a lifetime monthly pension equal to 75% of his/her earnings up to R600 per month. Should his/her salary be higher than that, 50% of the excess will be added to the pension up to a maximum of R300 of such monthly earnings. Should the permanent disability be assessed as between 100% and 30% by the Commissioner, then the pension is calculated on a pro-rata basis.
- ii) Should the worker have a 30% disability, he/she will be paid a lump sum which consists of 15 x his monthly salary up to a maximum of R600. Lesser disabilities are calculated proportionately.

Procedures for claiming under the First Schedule

The employers by law must:

- report the accident to the WC Commissioner in Pretoria, on form WCI 100
- provide transport for the worker to the doctor/hospital
- provide proof to the doctor that the worker was injured on duty (i.e. by filling in a form or writing a letter). This is what makes the worker's claim a WC case.
- The employer must fill in a resumption report (WCI 6) if the worker comes back to work, and even if the worker has been dismissed.

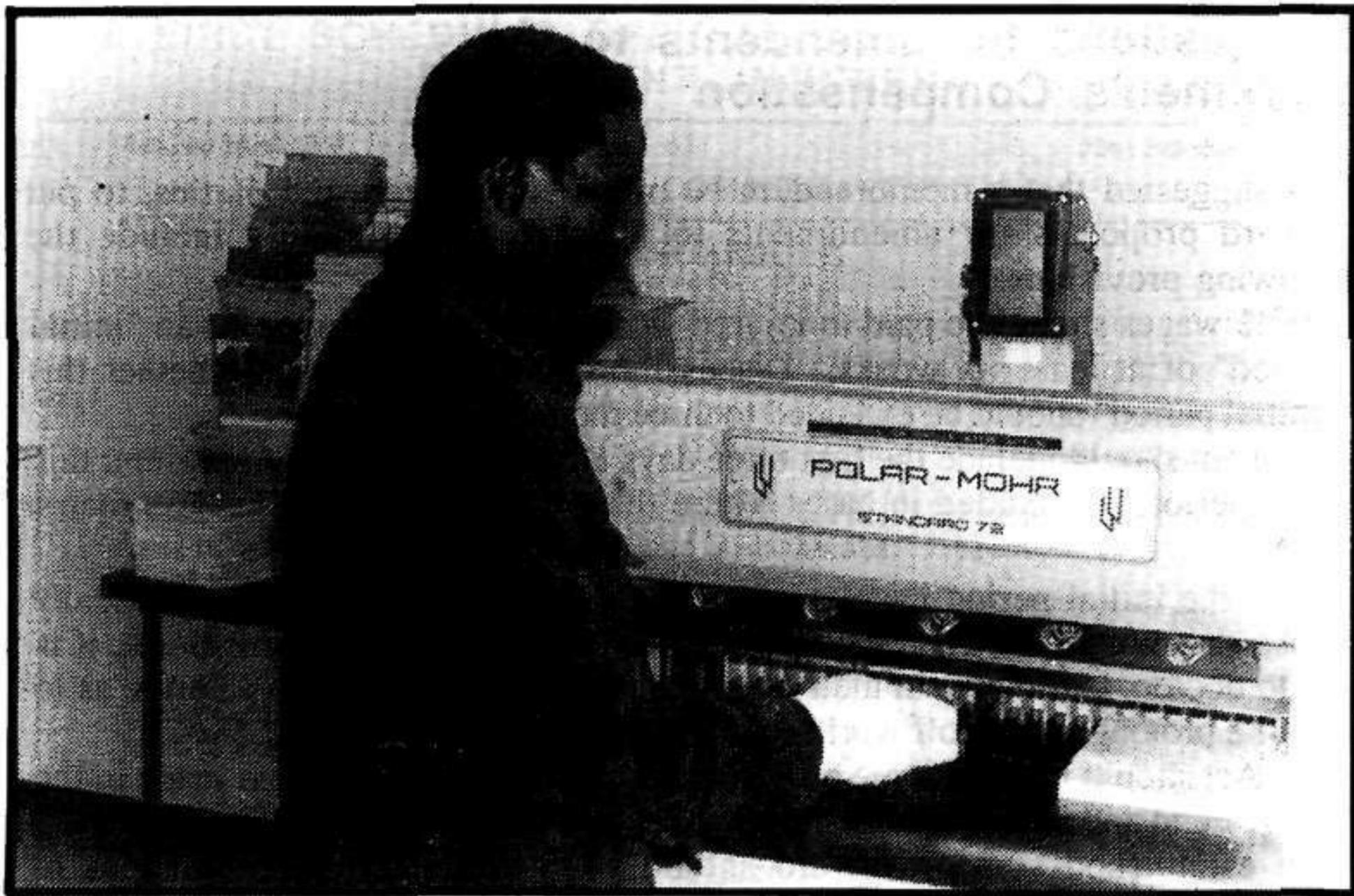
The doctor

- treats the patient free of charge and sends the bills to the WC Commissioner in Pretoria (see Form WCI 11)
- fills in the medical reports:
 - the first medical report (WCI 4)
 - the final medical report (WCI 5) stating the date on which patient is fit for work, and an assessment of permanent disability.

All these forms are available from the
Workmen's Compensation Commission
P.O. Box 955
Pretoria
0001

Problems regarding the role of doctors

Sometimes doctors do not examine compensation claimants properly. Doctors might, for instance, send the worker back to work before he/she is fit; or doctors might misassess the degree of permanent disability.



Doctors might send the worker back to work before he/she is fit

Checklist for the doctor assessing an injured worker

- Does the doctor know what kind of work the worker does, and whether he is in fact fit for work?
- In assessing permanent disability, has the doctor taken account of functional disability (loss of active movement) in addition to anatomical disability?
- Does the doctor represent the employer or the worker, or does he/she adopt a neutral professional position?
- Why do doctors do WCA work? Why do some doctors specialise in it?
- Does the doctor act within ethical standards in treating the worker? It is important to maintain these standards in the face of a system of payment that encourages surgery for rehabilitation.

What doctors can do in cases of delays in the compensation payment to workers

- If a worker does not receive any payment for months, the doctor concerned can
- ask the employer to pay the worker and then apply to the WCC for a refund
 - apply directly to the WCC for an interim payment for the worker
 - report the accident on behalf of the worker, if it has not been reported (Form WCI 3, together with an affidavit on WCI 132 from the worker).

Suggestions for amendments to the Workmen's Compensation Act

It is suggested that a memorandum be prepared by interested parties, to put forward proposals for amendments to the Act, which should include the following provisions:

- 100% wages should be paid to injured workers by the employer for an "initial period" of at least six weeks. Discussion could take place on whether this "initial period" should be extended to three months.
- Payment should include the first three days after the accident. (At present, this time period is excluded in cases where the worker is off duty for less than a week.)
- Once the initial period has expired, the Commissioner should automatically make the monthly interim payments specified in the Act. At this point, it is up to doctors to indicate in their reports that the injury is of such a nature as to require prolonged time off work.
- The Act should include some provision for pain and suffering as is made in the MVA Fund and as provided in the New Zealand scheme.
- An established standard award should be instituted for certain types of permanent injury, i.e. loss of limb, instead of compensation being related to a percentage of wages at the time of the accident.

At present, workers injured on duty receive only 75% of their wages from the Commissioner once the claim has been accepted. This can take anything from six weeks to over a year. If the employer had to pay wages and then recoupe the amount so paid from the Commissioner, this would provide the necessary motivation for the employer to report the accident and to submit all the relevant documents promptly to enable the claim to be processed.

Doctors already have this motivation, as they are not paid for medical claims for injured workers until all the necessary information is received by the Commissioner.

The proposal that employers pay wages for an initial period after an accident, will partially avoid the problem of unclaimed monies (presently amounting to R5 million) which only arises because the workers concerned cannot be traced. If the employer paid the worker, the Commissioner would then re-imburse the employer and this would save an enormous amount of clerical work at the WCC office.

Workers are possibly less likely to be dismissed immediately after an accident, if the employer is required by law to continue to pay him/her.

Workers should not be required to work if they are certified as unfit by a doctor. If, however, they choose to work during their convalescence, they should be entitled to sick pay and to wages for work done, i.e. double wages.

This article was compiled by the Industrial Aid Society

THE FIRST SCHEDULE: OFFICIAL LIST OF DEGREES OF PERMANENT INJURIES

Act No. 30 of 1941

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First Schedule

WORKMEN'S COMPENSATION

FIRST SCHEDULE.

INJURY.

	<i>Percentage of Disablement.</i>
Loss of two limbs.....	} 100
Loss of both hands, or of all fingers and both thumbs.....	
Total loss of sight.....	
Total paralysis.....	
Injuries resulting in being permanently bedridden.....	
Any other injury causing permanent total disablement.....	} 65
Loss of <i>arm</i> at shoulder.....	
Loss of <i>arm</i> between elbow and shoulder.....	} 55
Loss of <i>arm</i> at elbow.....	
Loss of <i>arm</i> between wrist and elbow.....	} 50
Loss of <i>hand</i> at wrist.....	
Loss of four <i>fingers</i> and <i>thumb</i> of one hand.....	} 40
Loss of four <i>fingers</i>	
Loss of <i>thumb</i> —both phalanges.....	25
one phalanx.....	15
Loss of <i>index finger</i> —three phalanges.....	10
two phalanges.....	8
one phalanx.....	5
Loss of <i>middle finger</i> —three phalanges.....	8
two phalanges.....	6
one phalanx.....	4
Loss of <i>ring finger</i> —three phalanges.....	6
two phalanges.....	5
one phalanx.....	3
Loss of <i>little finger</i> —three phalanges.....	4
two phalanges.....	3
one phalanx.....	2
Loss of <i>metacarpals</i> —first, second or third (additional).....	4
fourth or fifth (additional).....	2
Loss of <i>leg</i> —at hip.....	70
between knee and hip.....	45 to 70
below knee.....	35 to 45
Loss of <i>toes</i> —all.....	15
great, both phalanges.....	7
great, one phalanx.....	3
other than great—	
four toes.....	7
three toes.....	5
two toes.....	3
one toe.....	1
Eye: Loss of whole eye.....	} 30
sight of.....	
sight of, except perception of light.....	
Loss of <i>hearing</i> —both ears.....	50
one ear.....	7