

HOW IS ACCIDENT AND DISEASE COMPENSATION CALCULATED?

The issue of compensation for accidents and disease (contracted outside of the mines) is a difficult one, fraught with frustration for the individual worker concerned, and time-consuming for the health professional involved.

This article will show, in a step-by-step manner, how compensation is claimed under the Workmen's Compensation Act (WCA). It is important to note that with regard to industrial accidents, the Act covers all workers, including miners)

Benefits

A worker is entitled to the benefits of the Act if he/she sustains an injury or contracts an illness as a result of an "accident" arising out of and in the course of his/her employment, or if he/she has contracted an industrial disease due to the nature of the occupation.

Employees not covered by the Workmen's Compensation Act

The following categories of employees are not covered by the WCA:

- National servicemen
- Persons employed casually for a purpose other than the employer's business
- Domestic workers in private households or in boarding homes which employ fewer than six domestic workers
- Outworkers who make up or alter articles for an employer not on his/her premises

- Subcontractors, unless included in the assessment statement submitted to the Workmen's Compensation Commissioner (WCC)
- Workers earning more than R24 000 per year.

Categories of award

Awards are paid within the following categories:

- a) medical expenses
- b) temporary disablement
- c) permanent disablement.

a) Medical expenses

If the accident or disease was reported in the prescribed way, the worker will be refunded the money he/she had to spend on medical treatment as the result of the accident or disease. The medical expenses will be re-imbursed for a period of up to two years by either the Workmen's Compensation Commissioner, or by the employer if found to be individually liable.

In practice, what usually happens is that the employer (unless the worker has lost his/her job in the process) meets the costs of the medical bills and then claims for recompensation to the Commissioner.

b) Temporary disablement

i) Temporary total disablement

Temporary total disablement is the temporary inability of the worker to perform any work as a result of the accident. Examples of temporary disabilities are fractures, sprained ankle, burns (necessitating hospitalisation) requiring treatment that lasts for more than two weeks.

No compensation is payable in respect of the first three days of any disablement which lasts for less than two weeks. Where disablement lasts for two weeks or longer, compensation is payable in respect of the entire period.

Compensation is payable to an injured worker, during temporary total disablement, by way of periodical payments at a rate of 75% of his monthly earnings up to R600, plus 50% of such earnings above R600 to a maximum of R1 300 per month. The maximum compensation for temporary total disablement is thus R800 per month.

For example: If a worker earns R800 per month:

75% of R600	=	R450
50% of R200	=	R100
Total	=	R550

The total compensation is R550 per month.

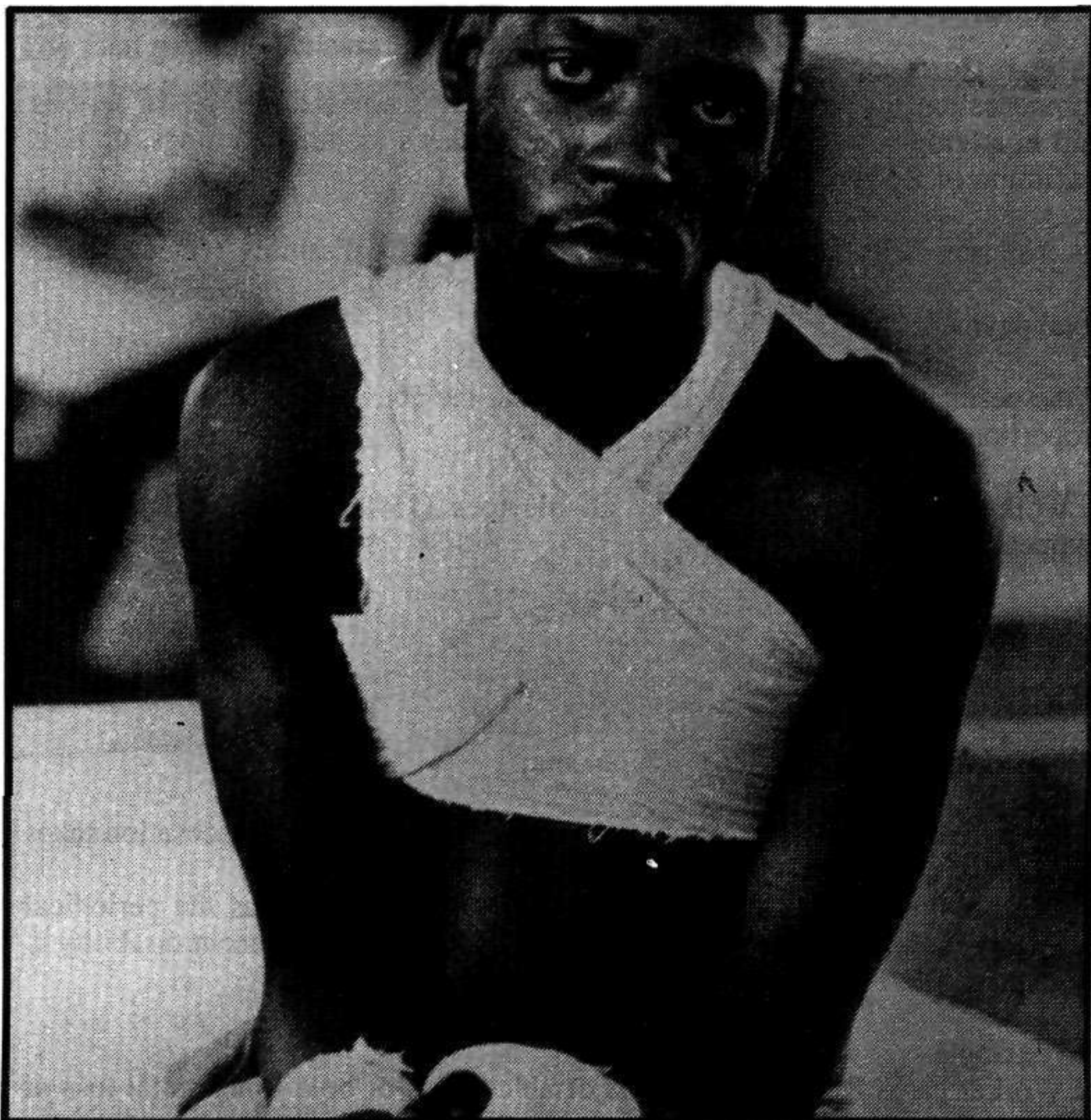
ii) Temporary partial disablement

In some instances, the worker returns to work but is unable to perform the whole of his former work, or to resume work at the same earnings.

For instance: A worker who has fractured his arm may be asked to return to work and do a cleaning job, whereas prior to the accident he may have been a machine operator or team leader in a mine. This works to the advantage of the employer because if a worker is relocated to another job, the employer's accident statistics will not be as high. But this may well be a disadvantage to the worker in terms of his/her discomfort as well as compensation.

Compensation in these circumstances is: some fraction of the payment in respect of temporary total disablement as decided by the Commissioner. Unfortunately, no criteria are laid down with regard to this decision.

Where the temporary total disablement lasts longer than 18 months, the disability for the purposes of compensation becomes a permanent one.



Job relocation disadvantages the worker in terms of compensation

c) Permanent disability

A condition is regarded as permanent if:

- a worker loses a limb as a result of an industrial accident**
- when it is apparent that there is no reasonable likelihood that the worker's condition will improve within a reasonable period.**

In terms of the WCA, the Commissioner alone makes assessments of permanent disablement. It is not the function of the doctor to make assessments, but where he/she has the necessary experience of compensation awards to express an opinion on the percentage of disablement, this is often helpful to the assessing officers. Because the only point in expressing such an opinion would be to help the Commissioner, the doctor should express his/her opinion only to the Commissioner when requested to do so. The doctor should under no circumstances disclose his/her estimate of the permanent disablement to the worker.

Calculations

Compensation for permanent disablement which is assessed at 30% or less, is paid in a lump sum, based on 15 times the worker's monthly earnings, up to a maximum of R600.

For instance: A worker earns R400 and loses an eye (% disability 30%):

Total payment = 15 X 400 = R6000.

If the permanent disability is less than 30%, the above calculation is reduced proportionately, for example:

A worker earns R400 and loses all his toes (15% permanent disability), compensation is

$$\frac{15}{30} \times \frac{1}{2} \times R400 \times 15 = R3\ 000$$

The worker receives R3 000 as a lump sum.

If the degree of permanent disablement is more than 30%, compensation takes the form of a monthly pension.

The pensions for total disablement (100%) are the same as the periodical payments for temporary total disablement. If a worker's permanent disability is more than 30% but less than 100%, a pro rata pension is paid.

For example:

- 1) Worker earns R800 and is 100% disabled (loss of both limbs, total loss of sight, total paralysis):**

75% of R600 = R450

50% of R200 = R100

Total = R550

The total monthly pension is R550.

2) Worker earns R800 and is 40% disabled (loss of 4 fingers)

75% of R600 = R450

50% of R200 = R100

Total = R550

Worker is only 40% disabled.

Total monthly pension = 40×550
 $\frac{—}{100} \frac{—}{1} = R220$

The total monthly pension is R220.



A condition is regarded as permanent if a worker loses a limb as a result of an industrial accident

Death of the worker

If a worker dies as a result of an accident, his widow is entitled to the payment of:

- a lump sum of R600 or twice the worker's monthly earnings, whichever is the lesser
- a monthly pension equivalent to 40% of the pension to which the worker would have been entitled to if he had been totally and permanently (100%) disabled.

Each child under 18 years of age is entitled to a monthly pension equal to 20% of the pension that would have been payable to the worker if he had been totally and permanently (100%) disabled, provided that the combined pension payable to the widow and children does not exceed the pension that would have been payable to the worker if he had been totally and permanently disabled.

On re-marriage, the widow's monthly pension continues and only stops at her death.

The applicaion is made on forms
WCL.114 - Claim for compensation
WCL.32 - Declaration by widow

For example: Worker was earning R700 per month at the time of his/her death:

75% of R600 = R450
50% of R100 = R 50
Total = R500

Widow/Spouse gets $\frac{40\%}{100} \times R500 = R200$ per month

Child/Children get $\frac{20}{100} \times R500 = R100$ per month

It is important to note that only three children will be provided for up till the age of 18 years, under the WCA.

Burial expenses

The WCA provides for payment of burial expenses up to a maximum of R650. This is meant to cover the costs of the coffin, shroud, grave, hire of hearse, storage, and transport of body.

Form WCL.46 has to be filled in for this and receipts must be attached to this form.

Dependants' pensions in independent homelands and Lesotho are paid through official Government Departments.

Scheduled industrial diseases

Compensation for industrial diseases on the Second Schedule of the WCA is calculated as if the disablement or death from disease was caused by an accident.

A disadvantage for the worker is that compensation is calculated on the worker's salary when he/she was last employed in the occupation from which the disease arose.

Experience in this area has been primarily with occupational lung disease and therefore our discussion will be centred around this.

Presently, under the WCA, four grades of disability for pneumoconiosis are recognised, i.e. 20%, 40%, 70%, and 100%. the degree of disability is determined on the basis of

- occupational history
- chest x-ray
- lung function tests.

Hence a worker who only has an exposure history and x-ray changes, will be classified as 20% disabled and will get a lump sum payment. For example:

A worker earns R400 per month. Total lump sum payment is:

$$\begin{array}{r} 20 \\ - \\ 30 \end{array} \times R400 \times 15 = R4000$$

Until recently (1.11.1985), these workers (20% disabled) had been classified as 35% disabled, and were eligible for a monthly pension, as are the other grades of disability (40%, 70% and 100%).

This new system works to the disadvantage of low-paid workers because:

- the majority of industrial workers do not have access to good quality lung function tests, capable of detecting early impairment
- the diagnosis of lung function abnormality depends on appropriate reference values. These have yet to be agreed upon for black South Africans
- an abnormal chest radiograph without impairment may lead to difficulties for the individual worker on the job market. In industry, compensated workers may be the first to be retrenched with little prospect of employment elsewhere if their status becomes known.
- there is no statutory obligation to review these workers and they may well be lost to follow-up. The diseases in the meantime may well progress.

Increased compensation

This may apply when a worker has an accident which is due to:

- negligence of the employer or any other person entrusted by the employer

- a potent defect in the condition of the premises or machinery which the employer had knowingly failed to remedy.
- Under these conditions, the worker may apply to the Commissioner for further compensation in addition to the compensation ordinarily payable. Form WCL.30 has to be submitted within six months of the accident.
- If the worker requires constant care by another person, the Commissioner may grant an allowance towards the cost of such help.

Responsibilities of the medical practitioner

- **Completing forms** - it is important to realise that clerks will be dealing with the processing of a claim at the Commissioner's office. It is therefore imperative that the proper forms are fully submitted on behalf of the worker. If the doctor is unable to do this, it is imperative that he/she refers the worker to appropriate agencies.
Forms tend to get lost. It is therefore important that doctors make copies of all forms submitted.
- It has already been mentioned that the Commissioner decides on the degree of permanent disability. However, this decision can be "influenced" by the information provided by the doctor. Therefore, descriptions of permanent disabilities should include the degree of loss of movement, precise measurements, the actual sites affected, loss of function, and similar relevant details. The use of anatomical terms is preferable.
A patient's real social situation and interest should be borne in mind when assessing disability.
- The doctor should attempt to reach beyond the individual with a compensatable condition, be it accident or disease, to investigate the patient's working conditions. This may include advising workers, management, and union officials about the prevention of accidents and diseases.
- **Occupational diseases:**
By law, there is no need for doctors to follow up patients once compensated. In practice, however, such a stance could be considered unethical. When seeing a patient with an occupational disease, the doctor should have a system of recall and review.

Objections and appeals

- A worker, if unhappy with the decision of the Commissioner may lodge an objection with the Commissioner within 60 days of being notified of the decision.
- The appeal may be made by the worker's trade union, employer or by the individual concerned.
- The objection is considered by the Commissioner with two assessors, one representing the worker, and the other the employer. This hearing has the form of a civil action.
- Finally an appeal against a decision of the Commissioner and the assessors may be made to the Supreme Court.