## *Appeals Commission for Alberta Workers' Compensation*

**Docket No.: AC0288-25-26**
**Decision No.: 2026-0055**

### Introduction

[1] This appeal is about a worker's entitlement to an unreduced economic loss payment (ELP) after age 65.

[2] The Appeals Commission can hear and decide this appeal because it is the final level of appeal for decisions made by the Workers' Compensation Board's (WCB's) Dispute Resolution and Decision Review Body, known as the DRDRB (*Workers' Compensation Act*, RSA 2000, c W-15 (*WCA*) section 13.1(1)). Excerpts of the legislation and WCB policy referenced in this decision can be found in the appendices.

[3] The worker appeals an April 28, 2025 decision made by the DRDRB, which upheld the WCB's decision that it was appropriate to reduce the worker's ELP at age 65 to reflect retirement.

[4] The appeal was filed within the time limit and all necessary parties received notice of the appeal and an opportunity to participate. The hearing took place on a documentary basis as requested by the worker.

### Background

[5] The worker was injured at work on March 23, 2009, when he slipped on ice and hurt his lower back.

[6] The worker continued to work but began to have additional difficulties in 2017. He was left with permanent work restrictions and could not return to his pre-accident job.

[7] The WCB provided the worker with vocational services, but a suitable job option was not found during the re-employment process.

[8] The worker began to receive an ELP in December of 2021, calculated based on zero earnings to reflect that he was not deemed to be employable.

[9] At age 65, the WCB reduced the worker's ELP. The worker disagreed with the reduction and appealed the decision to the DRDRB.

[10] The DRDRB upheld the case manager's decision, and the worker appealed to the Appeals Commission.

## Preliminary Matters

[11] The Appeals Commission received additional documents and a written submission from the worker's representative prior to the hearing. The documents and submissions were added to the Appeal Documents Package and reviewed by the panel.

[11.1] Additional documents were also provided by the worker, including materials relating to his pre-accident mortgage and financial circumstances.

## Issue

[12] **Is the worker entitled to an unreduced economic loss payment beyond age 65?**

## Analysis

### Legislation and Policy

[13] Section 56 of the *WCA* provides for the payment of compensation when there is an impairment of earning capacity due to either temporary or permanent disability.

[14] WCB Policy 04-04, Part 1 states that WCB will provide permanent disability benefits to workers for any impairment of earning capacity attributable to the compensable injury.

[15] WCB Policy 04-04, Part II, Application 4 applies in this case, because it provides guidance regarding ELPs when the date of accident is between January 1, 1995 and December 31, 2017. The worker's date of accident of March 23, 2009 falls within this date range.

[16] Questions 9 and 10 of Policy 04-04, Part II, Application 4 talks about ELP adjustments when a worker reaches retirement age. Those questions tell us that:

[16.1] At retirement, the impact of an injury on earning capacity is reduced as wages are replaced by pension/retirement income. The ELP is adjusted to reflect the changed earning capacity by using a formula similar to that used for standard retirement pensions.

[16.2] Age 65 is commonly considered to be normal retirement age, and the ELP will be adjusted when the worker reaches age 65 unless there is sufficient and satisfactory evidence to show that the worker would have continued to work past that age if the injury had not occurred.

[16.3] Workers are not required to provide absolute proof that they would have continued to work past age 65. However, there must be some independent evidence that the worker intended to work after age 65 and would have done so if not for the compensable injury.

[16.4] Examples of satisfactory independent evidence include:

- confirmation from the worker's accident employer, union, or other independent employment source that the worker had planned to continue after age 65 and employment was available;

- continued employment post-age 65 at the same level and earnings as pre-age 65; and

- continued employment post-age 65 at reduced earnings, when it is clear that the further reduction is due to a deterioration of the compensable work restrictions, rather than a personal choice of semi-retirement.

[16.5] In considering whether the worker intended to work after age 65, WCB will also consider any other relevant factors such as the normal retirement age for workers in the same pre-accident occupation.

[17] Throughout the decision, we will apply legislation current as of the hearing date, unless otherwise directed by legislation. We will also reference WCB policy effective on the date of the WCB decision, unless otherwise indicated in policy.

**Question to be Answered**

[18] To decide the appeal, the panel must answer the following question:

[18.1] Is there sufficient and satisfactory evidence, including some independent evidence, to establish that the worker intended to work after age 65 and would have done so but for the compensable accident?

## Key Submissions

[19] The representative's key submissions are summarized as follows:

[19.1] The full evidence on file demonstrates that the worker clearly intended, and financially needed, to continue working well past age 65.

[19.2] Policy 04-04 supports reinstating his unreduced ELP and requires recalculating it using his true current earning capacity.

[19.3] The worker provided a letter dated February 18, 2008 (pre-DOA March 23, 2009), stating his commitment to continue employment with the employer until the age of 75.

[19.4] The worker secured a 25-year mortgage at age 48, which establishes clear financial planning into his seventies. The worker was later compelled by court order to sell his home due to financial difficulties related to his reduced post-injury earnings. Although the mortgage was paid off, the worker still has debt as a consequence of the financial difficulties.

[19.5] Ten percent of drivers in Canada are aged 65 and older and the worker would have been employed had it not been for the injury.

[19.6] The worker obtained the mortgage in June 2006 with a 25-year amortization, requiring him to work until approximately age 73. This pre-accident decision to incur long-term debt proves the necessity to remain employed past age 65.

[19.7] The worker was forced to sell his home in 2016 due to financial problems attributable to work injuries. This subsequent loss of the asset, caused by the injury restricting his earning capacity, cannot negate the initial, valid pre-accident intent established by the loan's duration.

[19.8] The worker’s inability to secure employment was not a voluntary withdrawal from the workforce and was the direct result of his compensable injury.

[19.9] In 2021, the WCB acknowledged that no available jobs existed that met his functional limitations. This confirms he would have continued working had suitable work existed, but he was prevented from doing so by injury-related restrictions.

[19.10] His financial situation following the loss of his home, combined with ongoing debt and necessary expenses, made continued work beyond age 65 essential.

[19.11] The worker secured a position with a family member earning $800 per month. This demonstrates intent to work when opportunities exist, while also highlighting his limited employability in the competitive labour market.

[19.12] If the ELP is reinstated, it should be recalculated to reflect actual earnings capacity.

[19.13] The worker requests that the Appeals Commission reverse the decision to reduce the worker’s ELP and reinstate the unreduced benefit retroactive to February 1, 2024. The worker also requests direction that the WCB calculate the reinstated ELP based on actual post-accident earnings of $800 per month, reflecting his current demonstrated earning capacity.

## Evidentiary Findings

*Is there sufficient and satisfactory evidence, including some independent evidence, to establish that the worker intended to work after age 65 and would have done so but for the compensable accident?*

[20] Under Policy 04-04, an ELP is normally reduced at age 65 on the assumption that a worker has retired. The policy allows for an exception where the evidence shows that the worker intended to keep working beyond that age and would have done so if not for the compensable injury.

[21] The panel finds that the evidence, including independent evidence, shows that the worker intended to work after age 65 and would have done so but for the compensable accident. The worker is therefore entitled to an unreduced ELP beyond age 65.

[22] This finding is based largely on pre-accident evidence, together with post-accident information that helps explain how the compensable injury affected the worker's ability to continue working beyond age 65.

[23] The worker provided mortgage documentation showing that he entered into a 25-year mortgage at the age of 48 in 2006. While financial commitments alone are not proof of retirement intentions, the panel considers this evidence relevant as objective, pre-accident information that supports the worker's stated intention to remain employed beyond age 65. The timing and length of the mortgage support, on a balance of probabilities, that the worker anticipated continued participation in the workforce beyond that age.

[24] The panel does not treat the existence of a mortgage, on its own, as proof that a worker would have continued working beyond age 65. Rather, the mortgage is relevant because it is objective, pre-accident evidence created through an independent third party, well before any dispute over entitlement arose. It therefore provides reliable support for the worker's stated plan to remain employed beyond age 65, while not being relied upon as the sole basis for the panel's conclusion.

[25] The panel notes that the mortgage was later discharged following the court-ordered sale of the property, which the worker attributes to the effects of his compensation claim. That later development does not undermine the significance of the worker's original, pre-accident decision to take on long-term financial obligations. The evidence shows that the sale occurred after the compensable injury and in the context of reduced earning capacity, rather than as part of a decision to retire.

[26] The panel has considered the representative’s submissions regarding the worker’s post-accident financial circumstances. However, financial need is not a criterion under WCB Policy 04-04 for determining entitlement to an unreduced ELP beyond age 65. The panel therefore did not rely on those circumstances in deciding whether the worker intended to continue working beyond age 65 and would have done so but for the compensable accident.

[27] Additional support for the worker’s stated intent is found in correspondence on file dated February 2008, which predates the compensable accident and reflects an intention to continue working beyond age 65. The worker sent a letter to his employer prior to his accident, confirming his commitment to the company to a specific age. The panel acknowledges that the record contains no other information regarding the circumstances in which the document was created or retained. For that reason, the panel does not rely on the letter alone as determinative evidence. However, there is no evidence on file which contradicts its contents, and it is consistent with other objective, pre-accident evidence regarding the worker’s planning and employment intentions. When considered in that context, the panel affords the document limited but appropriate weight as part of the overall evidentiary record.

[28] In addition, Policy 04-04 identifies confirmation from a worker’s accident employer as an example of evidence that may support a finding that a worker intended to continue working beyond age 65. In this case, the employer’s separate letter confirming the worker’s intention to continue working past that age is consistent with that guidance. Again, the panel does not treat that letter as decisive on its own but considers it alongside the other evidence as reliable support for the worker’s stated intentions.

[29] The panel has considered the WCB’s position that the worker did not return to employment after the ELP was implemented and therefore did not demonstrate continued workforce participation. The policy does not require proof of actual employment after age 65, but evidence of intent and of whether the worker would likely have continued working but for the compensable injury.

[30] The panel accepts the worker’s submission that his inability to return to work was not a voluntary withdrawal from the workforce. In 2021, the WCB determined that the worker could not return to employment because of permanent compensable restrictions and that no suitable work was available within those restrictions.

[31] The panel is not persuaded that the worker’s inability to return to work supports a finding of retirement. The evidence shows that the worker did not return to employment because the compensable injury resulted in permanent functional limitations and, as the WCB itself determined, no suitable work was available within those restrictions. The panel does not accept that this same inability to work can then be treated as evidence that the worker chose to retire.

[32] We also note that the WCB did not revisit the question of employability after the worker's ELP was implemented in 2021. Although the worker had some physical capacity to work vocational services were discontinued in 2021.

[33] Where a worker cannot return to work because of a compensable injury, a lack of post-accident employment does not, on its own, show an intention to retire. In these circumstances, the worker's absence from the workforce reflects the loss of earning capacity caused by the injury, not a personal decision to withdraw from employment.

[34] The panel therefore finds that the evidence supports the worker's position that he would have continued working but for the compensable injury. The panel is not persuaded that the worker retired or otherwise voluntarily withdrew from the workforce.

[35] While the evidence does not provide absolute certainty, the panel is satisfied it is more likely than not that the worker intended to keep working. The issue is decided on a balance of probabilities as instructed by policy, and the panel is satisfied that this standard has been met.

[36] The panel has considered the representative's submission that some workers in the same occupational group continue working beyond age 65. While noted, this information is not sufficient to the panel to determine normal retirement age for workers in the same occupation. Ten percent of current drivers being over the age of 65 does not mean that most or even a significant percentage of drivers continue to work past age 65.

[37] The representative asked the panel to set the worker's benefit amount based on his current part-time earnings of $800 per month. The panel cannot make a decision on that issue. The appeal before us concerns only whether the worker qualifies to continue receiving an unreduced ELP after age 65. As the WCB has not yet reviewed or made a formal decision on how the reported earnings affect the worker's benefits, that issue is not before the panel. The WCB will need to review the earnings information and calculate the appropriate payment.

## Conclusion

[38] For these reasons, the panel finds that the worker has met the requirements of WCB Policy 04-04, Part II, Application 4. On the balance of probabilities, the worker intended to continue working beyond age 65 and would have done so but for the compensable accident.

## Decision

[39] The worker is entitled to an unreduced economic loss payment after age 65.

[40] The worker's appeal is granted.

[41] The April 28, 2025, Dispute Resolution and Decision Review Body decision is reversed.



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This decision is made with the full agreement of the hearing panel.

Decision signed in Edmonton, Alberta on January 21, 2026.

C. Robblee
Hearing Chair
(on behalf of the panel)

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| **Hearing Panel:** | C. Robblee | – Hearing Chair |
| | C. Clark | – Commissioner |
| | M. McAvoy | – Commissioner |

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# Appendix A

## Legislation – *Workers' Compensation Act*, RSA 2000, c W-15 (*WCA*)

Section 13.1(1)(a):

> "**13.1(1)** Subject to sections 13.2(11) and 13.4, the Appeals Commission has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act and the regulations in respect of
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> (a) appeals from decisions of a review body under section 9.4,"

Section 13.2(6)(b):

> "**(6)** In the hearing of an appeal under this section, the Appeals Commission . . .
>
> (b) is bound by the board of directors' policy relating to the matter under appeal,"

Section 56(1) and (17):

> "**56(1)** The Board shall pay periodic compensation
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> (a) on a monthly basis in the case of permanent disability,
>
> (b) on a bi-weekly basis in the case of temporary disability, or
>
> (c) on a basis other than under clause (a) or (b), if the Board considers it appropriate to do so. . . .
>
> **(17)** After the worker has reached both medical and vocational plateaus, the Board may, at such times as it considers appropriate, investigate the worker's circumstances for the purposes of reviewing the worker's entitlement to an economic loss payment, and may, following the investigation, confirm or adjust the level of the economic loss payment payable in accordance with the worker's actual or estimated earning capacity at the time."

# Appendix B

## Workers' Compensation Board Policy

Policy 04-04, Part I, Interpretation 1 and 3 (Issue Date: September 5, 2018):

"**POLICY:**

When a compensable accident results in permanent disability, WCB provides permanent disability benefits to the worker for any measurable permanent clinical impairment and for any impairment of earning capacity attributable to the compensable injury.

This policy is effective January 1, 2018, except when noted otherwise in a specific policy section(s).

**INTERPRETATION**

**1.0 Permanent Disability**

A worker is considered to have a permanent disability when a work injury results in:

- a permanent measurable clinical impairment, or
- an impairment of earning capacity due to permanent compensable work restrictions, or
- both. . . .

**3.0 Impairment of Earning Capacity**

WCB determines an impairment (loss) of earning capacity by assessing the impact permanent compensable work restrictions will have on the worker's ability to earn in any suitable employment (see Application 1, Question 3)."

Policy 04-04, Part II, Application 4, Questions 9 and 10 (Issue Date: April 3, 2018):

"**9.** ***Why is the ELP adjusted at retirement age?***

At retirement, the impact on earning capacity is reduced as wages are replaced by pension/retirement income. The ELP is adjusted to reflect the changed earning capacity by using a formula similar to that used for standard retirement pensions.

Age 65 is commonly considered to be normal retirement age, and the ELP will be adjusted when the worker reaches age 65 unless there is sufficient and satisfactory evidence to show that the worker would have continued to work past that age if the injury had not occurred.

**10.** ***What is considered sufficient and satisfactory evidence that a worker would have continued to work past age 65?***

As with any adjudicative issue, the decision will be made on the balance of probabilities. Workers are not required to provide absolute proof, however, there must be some independent evidence that the worker intended to work after age 65, and would have done so if not for the compensable injury.

Examples of satisfactory independent evidence include:

- confirmation from the worker's accident employer, union, or other independent employment source that the worker had planned to continue after age 65 and employment was available
- continued employment post-age 65 at the same level and earnings as pre-age 65 [for example, a 51 year old worker with compensable permanent work restrictions returns to work with reduced earning capacity and is paid an ELP. The worker continues to work at that level (same type of work, same hours) until age 69]
- continued employment post-age 65 at reduced earnings, when it is clear that the further reduction is due to a deterioration of the compensable work restrictions, rather than a personal choice of semi-retirement.

WCB will also consider any other relevant factors such as the normal retirement age for workers in the same pre-accident occupation."