

Client Services Policy Manual

Policy Number: **EN-20**
Subject: **Weighing Evidence**
Chapter: **Entitlement**

Policy Statement

Section 60 of the Act states:

An issue related to a worker's entitlement to compensation shall be decided on a balance of probabilities and where the evidence on each side of an issue is equally balanced the issue shall be decided in favour of the worker.

The standard of proof for decisions made under the Act is the balance of probabilities -- a degree of proof which is more probable than not.

Decision makers must assess and weigh all relevant evidence. This necessarily involves making judgments about the credibility, nature and quality of that evidence as they determine the weight of evidence on either side of an issue. Decision makers must weigh conflicting evidence to determine whether it weighs more toward one possibility than another. Where the evidence weighs more in one direction then that shall determine the issue.

After the information gathering process is complete and the evidence weighs more against a worker's position than for it, the decision maker does not have to identify an alternative explanation, supported by evidence of greater weight, in order to decide the issue.

If the decision maker concludes that the evidence for and against entitlement is equally weighted then the issue will be decided in favour of the worker. The decision maker will provide a rationale for finding the evidence to be equally weighted. Decisions shall be based on the weight assigned to the evidence by the decision maker.

For the purposes of this section, the following definitions shall apply:

"objective" means perceptible to the senses of another person or a readily observable result.

"subjective" means pertaining to or perceived only by the affected individual but not to the senses of another person or a result which is not readily observable.

The following general principles shall be applied by decision makers in situations where conflicting medical evidence must be

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weighed for the determination of entitlement:

1. A statement by a lay witness on a medical question may be considered as evidence if it relates to matters recognizable by a lay person; but not if it relates to matters that can only be determined by a person with expertise in medical science.
2. When addressing conflicting medical evidence, decision makers will not automatically prefer the medical evidence of one category of physicians or practitioners over that of another. Decision makers shall consider the following criteria in deciding what weight to give to such evidence:
 - a. the expertise of the individual providing the opinion;
 - b. the correctness of the facts relied upon by the provider of the opinion;
 - c. any issues of bias or objectivity with the opinion;
 - d. subjective versus objective medical evidence; and
 - e. the findings of any relevant scientific studies referenced by a qualified medical practitioner.
3. Where the weight to give conflicting medical evidence cannot readily be determined by applying the above criteria, the decision maker may consult with a WorkplaceNL medical officer to:
 - a. determine whether all appropriate medical evidence has been obtained;
 - b. determine if further investigations and/or medical examinations are required; or,
 - c. obtain an opinion regarding the weight of medical evidence.

Reference: *Workers' Compensation Act, R.S.N. 1990, c. W-11, Sections 2(o) and 43*

Amendment History

Original Effective Date 1987 10 29