

APPENDIX 2

APPORTIONMENT EXAMPLE CASES

Example 1.

The simplest case of apportionment is where there are two separate medical conditions, each affecting work function (and therefore earnings capacity) in one or more ways, each making a contribution to the loss. For instance:

At first assessment, a person is found permanently disabled due to pain from a knee injury suffered on duty, but the person also has permanent disability due to similar symptoms in the other knee, caused by injury in an off-duty road traffic accident. Both of these injuries affect work function in a similar way by disabling the person from performing a job that involves running, significant mobility or prolonged standing. The SMP assesses the person capable of an administrative / sedentary role consistent with qualifications and aptitude and then determines the salary consistent with such a role. The percentage loss of earnings capacity is then calculated by comparison of the salary from the administrative role against the police salary that the officer would have earned had he / she not become permanently disabled as a consequence of the qualifying injury. However, the functional limitation for work due to mobility problems arises partly due to the qualifying knee injury and partly due to the non-qualifying injury to the other knee. In such circumstances, apportionment would reasonably be applied to attribute 50% of the loss of earnings capacity to the duty injury and 50% to the non-qualifying injury. Thus, the percentage loss of earnings capacity on which this person's injury award is based would be half the percentage applicable if the duty injury was the sole cause of loss of function leading to reduction in earnings capacity. The SMP should record both causes of permanent disablement (e.g. both the left and right knee injuries) on the certificate he / she issues and specify that one is and one is not a qualifying injury so that apportionment can be applied, as appropriate, at subsequent reviews.

Example 2.

Apportionment where more than one cause within the same condition results in reduced work capability and consequent loss of earnings capacity:

At the initial SMP assessment, apportionment may also be appropriate where there is only one permanently disabling condition affecting work function (e.g. mechanical spinal pain restricting ability to sit for prolonged periods or perform significant manual handling tasks) but both a qualifying injury and other factors contribute to causation and loss of earnings. For example, a person had pre-existing degenerative back and neck symptoms before suffering a qualifying injury caused by a blow to the back. In such a case, the SMP may find evidence of multiple-level, age-related degenerative disease in the neck and back, together with evidence of disease at the specific spinal levels that are plausibly attributable to the duty injury. In such circumstances, salary from a part-time administrative role might form the basis for the SMP's calculation of a percentage figure for degree of disablement.

In a case where the officer had recovered from the duty back injury - perhaps returning to full duty for some period - and the permanent disablement from neck and back pain developed some time later, the SMP could reasonably judge the functional impact on earnings capacity as due to a combination of the duty injury and the age-related degenerative spinal disease. The SMP should then apportion the reduction in earnings capacity by an appropriate percentage to take into account the effects of the non-qualifying condition. However, in circumstances where the officer had never functionally recovered from the qualifying injury the functional effects should be treated as if the duty-injury was solely responsible for the loss in earnings capacity. Once again, both the qualifying and non-qualifying condition(s) should be specified and recorded on the SMP's decision statement so that apportionment can continue to be applied, if appropriate, at subsequent reviews.