Policy and Procedure Name	Violation of a Specific Safety Requirement (VSSR)
Policy Number	CP-22-01
Ohio Revised Code (ORC) Reference	ORC 4121.13, ORC 4121.47
Ohio Administrative Code (OAC) Reference	OAC 4121-3-20
Other Law/Rule References	None
Ohio Industrial Commission (IC) Resolution/Memo Reference	*Adjudications Before the Ohio Industrial Commission*
Effective Date	04/15/2022
Approved by	Ann M. Shannon, Chief of Claims Policy and Support
Origin	Claims Policy
Supersedes	Policy # CP-22-01, effective 11/14/2016
History	Previous versions of this policy are available upon request

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I. POLICY PURPOSE

This policy ensures that BWC appropriately processes VSSR applications to transfer to the IC, investigates allegations of VSSRs when requested to do so, and executes IC orders when the IC determines a VSSR has occurred.

II. APPLICABILITY

This policy applies to Claims Services staff and the Safety Violations Investigation Unit (SVIU)

III. DEFINITIONS

Civil Penalty
A fine, separate from the VSSR award, levied against the employer and generally punitive in nature.

Claimant
One who asserts a right, demand, or claim for workers' compensation benefits.

Dependent

A member of the family of the decedent, for example a surviving spouse or a blood relative, such as child, stepchild, parent or other blood relative who relied on the decedent, in whole or in part, for financial support as provided by law.

Site Employer
The employer to whom a worker was assigned by a temporary agency or a professional employer organization, and that controls the actual place of employment or work site including, but not limited to, the labor, safety devices, safeguards and other means of protection for the workers, who may or may not be actual employees, as defined in ORC 4123.01.

Violation of a Specific Safety Requirement
For purposes of this policy, violations of labor, safety devices, safeguards, or other means or methods of protection adapted to render the employees of every employment and place of employment and frequenters of every place of employment safe, or violations that fail to enforce reasonable orders for the adoption of the above.

IV. POLICY

A. VSSR Awards: General Information
   1. VSSR awards attach to any type of compensation paid to the claimant;
   2. VSSR awards are direct billed to the employer for reimbursement, unless the employer settles the VSSR liability or is out of business; and
   3. VSSR awards are not included in the employer's experience.

B. Applications for VSSR Awards
   1. Claimants seeking a VSSR award must complete an *Application for Additional Award for Violation of Specific Safety Requirement in a Workers' Compensation Claim* (IC-8/9).
      a. An IC-8/9 may be filed with BWC, but the IC has jurisdiction over the application and determination process. As such, BWC will ensure the IC receives any application filed with BWC.
      b. Claimants must file an IC-8/9 within one year of the date of injury, death or disability caused by an occupational disease.
   2. Amendments to applications filed with BWC will be immediately transmitted to the IC.

C. VSSR Investigation
   1. If the IC determines that additional information is needed to make a determination on a VSSR application, the IC may request that the BWC SVIU investigate.

2. Upon the IC's request for an investigation, SVIU will conduct an impartial investigation and submit a report of investigation (ROI) to the IC.
3. The IC will then send copies of the ROI to all parties to the claim and their authorized representatives. The parties have 30 days after the mailing of the report to review and provide supplemental information to the IC, or to request an extension, not to exceed an additional 30 days.
4. The IC may also hold a pre-hearing conference to review information, discuss settlement possibilities or set a date for a merit hearing. Parties should refer to the IC's website for further direction regarding VSSR hearings.

D. Initial IC Decision on Application for VSSR Award
   1. It is the policy of BWC to properly execute IC orders.
   2. If the IC issues a VSSR order in which the employer is directed to correct a violation, SVIU may revisit the employer to ensure the employer has complied with the IC order.
      a. If the employer has not corrected a violation as required by order, BWC will refer the matter to the IC as provided in OAC 4121-3-20(G).
      b. BWC may also make a referral for subsequent violations for consideration of civil penalties in accordance with OAC 4121-3-20(H).

E. VSSR Awards in Claims Where a Temporary Agency or Professional Employer Organization (PEO) is the Employer
   1. The IC may differentiate liability between the temporary agency or PEO employer and the site employer. While an IW may be deemed the employee of a temporary agency or PEO, for purposes of a VSSR award or for any penalty assessments, the IC may, and most likely will, designate the site employer, rather than the temporary agency or PEO, as liable.
   2. If the IC deems the site employer liable, the site employer's policy will be charged for the VSSR award, and any civil penalties assigned by the IC.

F. Calculating the VSSR Award
   1. The percentage of the VSSR award is determined by the IC in an amount between 15 and 50 percent.
   2. VSSR awards are calculated by taking the percentage awarded by the IC and multiplying it by the maximum award allowable by law on the date of injury (DOI) for any compensation the IW is receiving.
   3. If a VSSR award is made in a claim where the employer is or was paying salary continuation, BWC will calculate the VSSR award based on the SAWW for the period BWC would have paid temporary total compensation (TT) to the IW.

G. Paying the VSSR Award
   1. VSSR awards are paid based on compensation previously and currently awarded to the claimant, as well as all future payments.
   2. The VSSR award may be larger than the actual award of compensation being paid in the claim.
   3. VSSR awards are paid concurrently with the compensation the claimant is receiving at the time the award is granted.
   4. BWC will release VSSR payments when compensation is paid to the claimant.
   5. BWC will not issue the initial VSSR award payment until at least 30 days after the IC order is issued to ensure a request for rehearing is not filed.

H. Holding or Stopping Payment of a VSSR Award
   1. BWC will hold or stop payment of a VSSR award when a request for rehearing is pending with the IC; or
   2. When BWC receives notice that the parties are settling either:
      a. The claim in which the VSSR is being paid; or
      b. The liability for the VSSR award in the claim, but not the source claim itself.
      c. In both settlement scenarios referenced above, refer to the *Lump Sum Settlement* policy for additional information.

I. VSSR Settlements
   1. VSSR Settlements with the Employer
      a. It is the policy of BWC that, if the employer involved in the VSSR allegation is still in business, the employer is responsible for entering into and paying the VSSR settlement.
      b. The employer and claimant may decide to enter into a settlement agreement at any time prior to or following the IC issuing a decision on the merits of the IC-8/9 application.
      c. These settlements must be approved by the IC.
      d. While the IC order may not indicate which party will pay the settlement, payment of the settlement is the responsibility of the employer.
   2. VSSR Settlements with BWC
      a. BWC may enter into a VSSR settlement with a claimant only when the employer is no longer in business. This may occur prior to, or after an IC decision on the merits of the IC-8/9 application.
      b. When BWC is a party to a VSSR settlement, BWC will release payment for the settlement no sooner than 30 days after the settlement is approved.
   3. If an IW settles an employer's VSSR liability and then the IW subsequently dies, the dependents are not entitled to a VSSR award, even if death benefits are awarded.

J. VSSR Overpayments
   1. If the IC declares an overpayment on any type of compensation for which a VSSR award was also paid, the VSSR payments, as well as the compensation payments, are an overpayment.
      a. VSSR overpayments will be collected at 100% from future VSSR awards, including VSSR awards in any of the claimant's other claims.
      b. The IC does not have to declare the VSSR award as overpaid if it has declared the compensation overpaid.
   2. When a court overturns an IC decision to pay a VSSR, BWC will not recoup the resulting overpayment from the claimant.

V. PROCEDURE

A. General Claim Note and Documentation Requirements
   1. BWC staff will refer to the *Claim File Contents and Documentation* policy and procedure for claim note and documentation requirements; and
   2. Must follow any other specific instructions for claim notes and documentation included in this procedure.

B. Receipt of a VSSR Application
   1. While an IC-8/9 may be filed with BWC, the IC has jurisdiction over the determination process.
   2. The claims service specialist (CSS) will review any IC-8/9 imaged into a claim file to determine if the VSSR application was filed with BWC or the IC.
      a. If the application was filed with the IC and the imaged document contains an IC date stamp, the CSS must:
         i. Create a legal case in the claim; and
         ii. Update the issue to hearing.
      b. If the application does not have an IC date stamp, the CSS will:
         i. Create a legal case and select the event titled, "referred to the IC";
         ii. Complete a Notice of Referral (NOR) to notify the IC that an IC-8/9 application has been filed;
         iii. Update the case issue to hearing; and
         iv. Document in the claims management system:
            a) That a request for a VSSR award was filed, and who filed the request; and
            b) All available information related to the VSSR (e.g., a temporary employment or PEO/site employer situation).

C. SVIU VSSR Investigation
    1. If the IC requires additional information to make a determination on a VSSR application, it may request that SVIU investigate.
    2. SVIU will conduct an impartial investigation, which may include, but is not limited to:
        a. Inspecting the site where the injury occurred;
        b. Conducting interviews;
        c. Taking statements;
        d. Collecting any pertinent documentation (e.g., paperwork regarding the injury and incident, the equipment, employer policy/procedure); and
        e. Taping and/or photographing the site where the injury occurred.
    3. Upon completion of the investigation, SVIU will provide a ROI to the IC.
    4. SVIU will terminate an investigation prior to its conclusion when:
        a. The IC orders the matter be held in abeyance at the request of all parties;
        b. The parties settle only the VSSR liability, or settle the claim to include the VSSR liability; or
        c. The claimant withdraws the application.

D. Initial IC Decision on Application for VSSR Award
    1. If the IC grants a VSSR percentage award, the CSS assigned to the claim will:
        a. Perfect the IC order;
        b. Calculate the VSSR award in accordance with Section V.E of this procedure, outlined below; and
        c. Pay the VSSR award for any past and future compensation awards in accordance with Section V.F of this procedure, outlined below.
    2. If the IC denies a VSSR award, the CSS will continue to manage the allowed claim pursuant to all applicable policies and procedures, and no further action will be taken on the IC-8/9.
    3. Claims Services staff must update profile statements within the claims management system as appropriate.

E. Calculating the VSSR Award
    1. The CSS will calculate the award based on the maximum amount allowable by law in effect on the DOI for any compensation types the IW is receiving. Staff may refer to the Compensation Rate Chart on COR for assistance in determining this amount.
    2. The CSS will use the following calculations to determine the VSSR award:
        a. For percentage of permanent partial disability (%PP) awards:
            i. VSSR% x 1/3 Maximum SAWW x Weeks = Award which is the maximum rate for %PP listed on the Compensation Rate Chart.

    - ii. Example: IW is granted a 4% PP award, equating to 8 weeks of compensation. The IW was also granted a 40% VSSR award. The SAWW %PP maximum is $279.33. Take 40% x $279.33 x8 = $893.94.
  - b. In cases of facial disfigurement:
    - i. VSSR % x Maximum award allowable by law, regardless of the actual amount awarded to the IW.
    - ii. Example: An IW receives a facial disfigurement award on 8/1/2013 for $4,000. The IW also receives a VSSR award of 40%. The maximum for facial disfigurement is $10,000. Claims Services staff will multiply 40% by $10,000, equaling a VSSR payment of $4,000.
    - iii. Example: Facial disfigurement award with a DOI on or before 6/29/2006 has a maximum award of $5,000. The IC issued a 40% VSSR award. The IW received a $3,000 facial disfigurement award. The calculation is 40% x $5,000, equaling a VSSR payment of $2,000.
    - iv. Example: Facial disfigurement award with a DOI on or after 6/30/2006 has a max award of $10,000. The IC issued a 40% VSSR award. The IW received a $3,000 facial disfigurement award. The calculation is 40% x $10,000, equaling a VSSR payment of $4,000.
  - c. For all other awards (including death claims):
    - i. VSSR% x Maximum SAWW = Award that is the weekly rate.
    - ii. Example: IW died in 2013, with a maximum death rate of $837. The IC grants a 40% VSSR award. Take 40% x $837 = $334.80.
  - d. If the IC grants a VSSR award in a claim where the employer is or was paying salary continuation, the CSS:
    - i. Will calculate the VSSR award based on the SAWW for the period BWC would have paid TT to the IW; and
    - ii. May refer to the *Salary Continuation* policy for additional information.

F. Paying the VSSR Award

1. The CSS will apply the VSSR to:
   - a. All previously paid compensation in the claim, if the claimant is not currently receiving compensation in the claim;
   - b. All current compensation payments in the claim; and
   - c. Any compensation the claimant receives in the claim in the future.
2. Once BWC receives the IC order granting the VSSR award, the CSS will delay payment until the expiration of the 30-day period in which parties may request a rehearing.
   - a. If a request for rehearing is received during this 30-day period, the CSS must continue to hold payment until the IC order is final.
   - b. After the IC order is final, the CSS will:

        i. Select the appropriate VSSR indemnity type based upon the compensation paid in the claim; and
        ii. Issue the initial VSSR payment.
3. If the IC order indicates that a temporary agency or PEO is liable for the VSSR, pursuant to *Supreme Court in State ex rel. Newman v. Indus. Comm.* (1997), 77 Ohio St.3d 271, the CSS will follow the steps outlined immediately above, but will issue two separate payments:
    a. One check for the claim benefits, billed to the temporary agency or PEO; and
    b. One check for the VSSR award, billed to the site employer.
4. For all VSSR awards, the CSS will be responsible for:
    a. Modifying the first payment date of the schedule to match the payment dates of any future payments for the compensation type;
    b. Creating the corresponding VSSR benefit type any time a new benefit type is awarded in the claim;
    c. Extending compensation and VSSR payments in the claim as appropriate; and
    d. Other claims management matters, including wage adjustments to VSSR payments, if ordered.
5. If the IC also awards a civil penalty:
    a. Claims Services staff will notify BWC Accounts Receivable.
    b. BWC Accounts Receivable will directly bill the employer and deposit funds in the Occupational Safety Loan Fund.

G. VSSR Settlements
1. VSSR Settlements with the Employer Prior to IC Decision on VSSR Award
    a. When the IC approves a VSSR settlement between the employer and claimant prior to determination on the merits of an IC-8/9 application, the settlement will be paid by the employer.
    b. No further action is required of Claims Services staff.
2. VSSR Settlements with BWC After IC Decision on VSSR Award
    a. BWC only enters into and pays VSSR settlements with the claimant when the employer is no longer in business.
    b. When the VSSR is settled between the claimant and BWC, BWC Legal will:
        i. Sign the *Settlement of Claimed Violation of a Specific Safety Requirement* (IC-10); and
        ii. Directly notify BWC's Special Claims Unit of the VSSR settlement.
    c. The Special Claims Unit will pay the VSSR settlement upon expiration of the 30-day period if no request for a rehearing is filed.
    d. If the claim is assigned to a CSS in a claims service office and a VSSR settlement order between BWC and the claimant is imaged into the claim, no further action is required of Claims Services staff.

3. In lump sum settlement (LSS) requests for claims with a VSSR award, staff will refer to the *Lump Sum Settlement* policy and procedure for direction regarding:
   a. LSS requests for claims with VSSR awards; and
   b. VSSR settlements:
      i. With BWC prior to an IC decision on the VSSR award;
      ii. With the employer after an IC decision on the VSSR award; and
      iii. When the employer settles the VSSR but goes out of business before the VSSR settlement is paid.

H. VSSR Overpayments
1. The IC is not required to declare a VSSR award as overpaid.
2. When a claimant is declared overpaid for compensation on which a VSSR award was attached, Claims Services staff will notify the Policy Processing Department, the employer management supervisor (EMS), and the injury management supervisor (IMS) so that employer history and claims management payment plans reflect the overpayment.
3. Claims Services staff must include the following in the notification:
   a. The claim number;
   b. Date of injury;
   c. Amount of credit; and
   d. Employer risk number.