

Payment of interest

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OBJECTIVE

1. This practice directive explains the circumstances in which the Board will pay interest on an overpayment of assessments and aids in the interpretation of *Assessment Manual Item: AP1-39-2*.

INTERPRETATIVE GUIDELINES

2. The Board will only pay interest on an overpayment of assessments in one of the following three circumstances: a blatant Board error [AP1-39-2(d)]; a successful employer review or appeal [s. 259(2) of the *Workers Compensation Act*]; or under the Historical Relief of Costs project [*Panel Resolution 98/04/23-03 Re: Section 39(1)(e)* dated 23 April 1998].

I BLATANT BOARD ERROR

3. A “blatant Board error” is distinguishable from a “Board error” in the following two significant aspects:
 - (a) The error is offensively obvious.
 - (b) The error involves an exercise of reason.
4. A blatant Board error requires more than mere mechanical action or application of process. A clerical error, oversight, or a mere slip (e.g., a transposed keystroke) does not constitute a blatant Board error.

A The Test

5. A blatant Board error requires that each branch of the following conjunctive test must be established:
 - (a) There was an error.

- (b) The error was obvious, in that the error can be identified without undue investigation.
 - (c) The error was overriding, in that it worked to the firm's actual disadvantage and a different result would have occurred but for the error.
 - (d) The error required the exercise of reason or a determination between competing considerations and was palpably violative of fact, judgment, or both. However, the extraordinary passage of time in implementing an application of process may obviate this branch of the test.
6. The nature of a blatant Board error must be determined as at the time of its making; that is, was the error blatant at the time of its making? That once discovered and with hindsight, the error can perhaps be so characterized is irrelevant. Moreover, the fact of the error itself must be distinguished from the effect of the error: a simple transposition of keystrokes may work to the firm's actual disadvantage; however, the outcome does not alter the simple nature of the error.
7. A different conclusion based on new evidence does not constitute blatant Board error. As well, a different conclusion based on a re-examination or re-weighing of existing evidence does not constitute blatant Board error, if the facts are reasonably capable of supporting the initial conclusion.

B Presidential Determination of a Blatant Board Error

8. Given that there will be few blatant Board errors, and to ensure consistency in the interpretation of what constitutes blatant Board error, only the Board's President can determine that a blatant Board error has occurred. Upon the President's determination that a blatant Board error has occurred, the Director, Assessments, may determine the date from which interest should be paid.

II SUCCESSFUL REVIEWS OR APPEALS

9. Section 259(2) of the *Act* directs that if a decision of the Review Division or Workers' Compensation Appeal Tribunal requires the refund of an amount to an employer, interest calculated in accordance with the policies of the Board of Directors must be paid to the employer on that refunded amount.
10. In the absence of specific direction from the Review Division or the Workers' Compensation Appeal Tribunal respecting the effective date, interest on monies paid to the Board will be payable from the date the employer requested review or filed the notice of appeal.

III HISTORICAL COST RELIEF PROJECT

11. Firms will be paid interest on cost relief obtained under section 39(1)(e) of the *Act*, through the Historical Relief of Costs project, if:
 - the wage loss concluded or pension was awarded (not including vocational rehabilitation expenditures) after 15 March 1978 and on or before 31 December 1993, and
 - the firm requested 39(1)(e) cost relief in writing prior to 15 October 1998.
12. Reconsideration or a review or appeal decision may change a firm's entitlement on a Historical Project cost relief decision. Where reconsideration or a review or appeal decision increases a firm's entitlement on a Historical Project adjudication, the Board will pay interest on the difference between the original principal owed and the varied principal amount.
13. The Board will pay interest on any resulting refund effective from the date of the firm's written request for cost relief.