

**INTEREST ON RETROACTIVE WAGE LOSS  
AND PERMANENT DISABILITY LUMP-SUM BENEFITS  
Effective March 3, 2003**

The *Workers Compensation Act* (the "Act") was amended by Bill 63, the *Workers Compensation Amendment Act (No.2), 2002*. As a result, amendments were made to Vols. I and II of the *Rehabilitation Services and Claims Manual* ("RSCM"). These amendments necessitated changes to this practice directive. The effective date for the amendments is March 3, 2003.

**BACKGROUND**

On October 15, 2001, the Panel of Administrators approved amendments to the Board's policies concerning the entitlement to and calculation of interest. The Resolution of the Panel of Administrators is effective November 1, 2001. All interest decisions made on or after November 1, 2001 should be in accordance with the law, policy and guidelines in this directive.

**LAW**

Section 258 of the *Act*, states, in part:

*(3) If a review officer has made a decision described under subsection (1), the Board must defer the payment of any compensation applicable to the time period before that decision*

- (a) for a period of 40 days following the review officer's decision, and*
- (b) if the review officer's decision is appealed under section 239, for a further period until the appeal tribunal has made a final decision or the appeal has been withdrawn, as the case may be.*

...

*(5) If the appeal tribunal's decision on appeal requires the payment of compensation, all or part of which was deferred under subsection (3), interest must be paid on the deferred amount of that compensation as specified in subsection (6).*

*(6) Interest payable under subsection (5) must be calculated in accordance with the policies of the board of directors and begins*

- (a) 41 days after the review officer made his or her decision, or*
- (b) on an earlier day determined in accordance with the policies of the board of directors.*

**POLICY**

RSCM Vol. I and II, Policy item, #50.00, *Interest*, states, in part, that:

*Interest will be calculated from the first day of the month following the commencement date of the retroactive benefit and up to the end of the month preceding the decision date. Notwithstanding, in no case will interest accrue for a period greater than twenty years.*

*In all cases where a decision to award interest is made, the Board will pay simple interest at a rate equal to the prime lending rate of the banker to the government (i.e., the CIBC).*

RSCM Vol. II, Policy item #100.83, *Implementation of Review Division Decisions*, states, in part, that:

*Where retroactive benefits are payable, after the decision of the Workers' Compensation Appeal Tribunal, interest is to be paid in accordance with the Board's general policy on the payment of interest on retroactive benefits as set out in policy item #50.00. However, where no interest is payable under policy item #50.00 because it is determined that the retroactive benefit was not necessitated by a blatant Board error, interest will be paid beginning 41 days after the date on which the Review Division made its decision. The amount of interest to be paid is to be calculated in accordance with the interest rates set out in policy item #50.00.*

RSCM Vols. I and II, Policy item #105.30, *Implementation of Review Board Findings*, which is an Appendix to C13-104.00, provides transitional policy guidance relating to Appeal Division decisions.

RSCM Vols. I and II, Policy item #48.42, *Recovery of Overpayments*, provides guidance on the charging of interest in cases of overpayments caused by fraud or misrepresentation.

## **HIGHLIGHTS**

### **Interest will only be payable in the following situations:**

- under section 19(2)(c);
- under section 258(5);
- blatant Board error; or
- transitional situations (RSCM Vol. I and II, Policy item #105.30, Appendix to C13-104.00)

1. With respect to compensation matters, the *Act* provides entitlement to interest in those situations covered in:

- Section 19(2)(c), which relates to benefits for surviving spouses of deceased workers (fatals claims);

- Section 258(5), which relates to retroactive benefits flowing from Review Division decisions that were deferred pending an appeal to the Workers' Compensation Appeal Tribunal ("WCAT"). It provides two choices for the manner in which interest is paid: either 41 days after the review officer made the decision, or on an earlier day determined by policy.

However, RSCM Vol. II, Policy item #100.83, provides further direction. It states that following WCAT decisions *"where no interest is payable under policy item #50.00 because it is determined that the retroactive benefit was not necessitated by a blatant Board error, interest will be paid beginning 41 days after the date on which the Review Division made its decision."*

Therefore, in section 258(5) situations, in the absence of blatant Board error, interest *"will be paid beginning 41 days after the date on which the Review Division made its decision"*.

- Historically, section 92(3) provided interest relating to retroactive benefits flowing from Review Board findings that were deferred pending an appeal to the Appeal Division. Bill 63 has repealed that section. However, during the period of transition, interest payable in those situations will be paid in accordance with RSCM Vol. I and II, Policy item #105.30, Appendix to #C13-104.00. In particular, interest will be paid beginning **31** days after the date on which the review board made its finding.
2. With the exception of situations outlined in section 19(2)(c), section 258(5), or transitional situations, interest will not be paid unless there was a blatant Board error that necessitated the payment.
  3. For an error to be blatant, *"it must be an obvious and overriding error. For example, the error must be one that had the Board officer known that he or she was making the error at the time, it would have caused the officer to change the course of reasoning and the outcome. A "blatant" error cannot be characterized as an understandable error based on misjudgment. Rather, it describes a glaring error that no reasonable person should make."* Examples of blatant Board errors are listed in the attached "Appendix A".
  4. In cases of blatant Board error, or section 19(2)(c) benefits, interest is calculated from the first day of the month following the commencement date of the retroactive benefits, to the end of the month preceding the interest decision date.
  5. **Where interest is payable in accordance with section 258(5), RSCM Vol. II, Policy item #100.83 provides that, in the absence of blatant Board error, interest will be paid beginning 41 days after the date on which the review officer made his or her decision, until the end of the month preceding the interest decision date.**
  6. Where interest is payable in accordance with the transitional provisions relating to RSCM Vol. I and II, Policy item #105.30, Appendix to C13-104.00, interest will be paid beginning

**31** days after the date on which the Review Board made its finding, until the end of the month preceding the interest decision date.

7. The policy no longer requires a one-year period between the date of implementation and date of commencement of retroactive benefits.
8. The Board will pay simple interest in accordance with the provisions of the *Court Order Interest Act*.
9. In no case will interest accrue for a period greater than twenty years.
10. Where it is determined that entitlement to interest exists, the new method for calculating the amount of interest will apply for the entire entitlement period (retrospective calculation).
11. Interest charged on overpayments is calculated in the same manner in which the Board calculates the payment of interest. See RSCM Vol. I and II, Policy items #50.00 and #48.42.

### **Adjudicative Procedures**

1. Interest is payable only to workers or employers. Therefore, interest cannot, for example, be paid to private or other disability benefit plans, or to estates of deceased workers.
2. The amendments to the policies apply to interest decision dates on or after November 1, 2001. The "interest decision date" is the date that a Board officer decides that interest is payable.
3. **Where interest is payable pursuant to section 19(2)(c), the Board officer should:**
  - Complete Form 16B1 - *Interest Calculation for Accrued Pension Payments*.
  - Refer it to the Client Services Manager ("CSM"), Sensitive Claims Section, Disability Awards, for authorization.
  - If the CSM authorizes the interest payment, the Form should be referred to the Board's Actuarial Department.
  - The Actuarial Department will calculate the amount of interest owing and return the completed Form to the Board officer, for implementation.
  - Copies of the completed Form should be scanned or placed on the file.
4. **Where interest is payable pursuant to section 258(5), or in accordance with the transitional provisions under RSCM Vol. I and II, Policy item #105.30, Appendix to C13-104.00, the Board officer responsible for the file may authorize the payment of interest and should:**
  - Complete Form 25B3 - *Interest Calculations for Retroactive Wage-loss Payments* and forward it to the Board's Actuarial Department.

- The Board officer should clearly note on the Form that interest is payable in accordance with section 258(5). Also, the interest decision date should be clearly marked.
- The Actuarial Department will calculate the amount of interest owing and return the completed Form to the Board officer, for implementation.
- Copies of the completed Form should be scanned or placed on the file.

**5. Procedures for the authorization and payment of interest as a result of a blatant Board error:**

- Notwithstanding a blatant Board error, Board officers may not reconsider a decision unless the provisions in section 96(5) have been met – i.e. less than 75 days since the decision was made and no review/appeal initiated. See Practice Directive #59, *Reconsiderations*. (Therefore, no interest would be a payable unless section 96(5) had first been met.)
- Given that there will be few blatant Board errors, and to ensure consistency in the interpretation of what constitutes "blatant Board error", Presidential approval is required.
- Where a Board officer believes that a blatant Board error occurred, which necessitated the payment of retroactive benefits, he or she should prepare a memorandum to his or her Director. (In the case of paper or E-file claims, the memorandum should be in paper form.) It should outline the details of the case and the reasons why the Board officer believes that a blatant Board error occurred. If the Director believes the request has merit, that is, that a blatant Board error occurred, the Director will so note and forward the memorandum to the President, for approval.
- If the President determines that a blatant error has occurred, the memorandum and approval will be forwarded to the Board officer, for implementation. There are two types of retroactive benefits that might attract interest: wage loss and lump-sum permanent disability awards. The following outlines the procedure for implementing interest according to each type of benefit:

Interest on Retroactive Wage Loss

- The Board officer should complete Form 25B3 - *Interest Calculations for Retroactive Wage-loss Payments*, and forward it to the Board's Actuarial Department.
- The Board officer should clearly note on the Form that interest is not payable pursuant to section 258(5) (or the transitional provisions in RSCM Vol. I and II, Policy item #105.30, Appendix to C13-104.00) but is payable as a result of a blatant Board error and that the President approved the payment of interest. Care should be taken to ensure that the interest decision date is clearly noted.
- The Actuarial Department will calculate the amount of interest and return the completed Form to the Board officer, for implementation.
- Copies of the completed Form should be scanned or placed on the file.

### Interest on Retroactive Lump-sum Permanent Disability Awards

- The Board officer will prepare a Form 24/25 Memorandum, advising the Computation Clerk of entitlement to a retroactive lump sum permanent disability award.
- The Form 24/25 Memorandum should note that interest is payable as a result of a blatant Board error and that the President approved the payment of interest. The interest decision date should be clearly noted.
- The Computation Clerk will calculate the period for which interest is due. The Computation Clerk enters all data into the permanent disability award system, which generates a Form 25B89, *Pension Calculation Sheet*, or Form 25B88, *Pension Calculation Sheet - Loss of Earnings*.
- The Form is referred back to the Board officer, or Manager as required, for electronic approval.
- Copies of all completed Forms should be scanned or placed on the file.

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## APPENDIX "A"

### Blatant Board Errors

1. A document belonging to another worker's claim file was used in the adjudication of the worker's claim. Had the Board officer disregarded the erroneous information, it would have caused the Board officer to change the course of reasoning and the outcome.
2. The wrong body part was adjudicated. For example, a decision was made to disallow a claim for a left knee injury. It was evident that the worker's claim was for a right knee injury. Had the Board officer adjudicated entitlement for an injury to the correct knee, it would have caused the Board officer to change the course of reasoning and the outcome.
3. The worker submitted evidence that clearly substantiated further employment earnings. It was evident that the Board officer had missed or not seen the information when calculating the worker's wage rate. Had the Board officer reviewed the earnings information, it would have caused the Board officer to change the course of reasoning and the outcome.

### No Blatant Board Error

1. A decision or finding of an appellate body, based on new evidence or a re-weighing of existing evidence, does not constitute blatant Board error.
2. Occasionally it is argued that, upon retrospective review of a decision, it might seem that a Board officer did not correctly weigh or consider a piece of information in reaching the decision. Simply re-weighing the evidence and reaching another conclusion does not constitute a blatant Board error. While a situation might occur where a Board officer did not formally document his or her consideration of a specific piece of information, this does not constitute blatant Board error.