THE WORKERS’ COMPENSATION BOARD OF BRITISH COLUMBIA

RESOLUTION OF THE BOARD OF DIRECTORS

RE: INTEREST ON COMPENSATION

WHEREAS:

Pursuant to section 82 of the Workers Compensation Act, RSBC 1996, Chapter 492 and amendments thereto ("Act"), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

By resolution number 2013/11/20-01, dated November 20, 2013, attached as Appendix 1, the Board of Directors approved policy changes, effective January 1, 2014, in connection with policy item #50.00, Interest, of the Rehabilitation Services & Claims Manual, Volumes I and II (RS&CM);

AND WHEREAS:

The policy changes removed the payment of interest where there was a blatant Board error that required a retroactive payment, from policy item #50.00, Interest, of the RS&CM, with the result that the policy references only interest on compensation benefits as set out under sections 19(2)(c) and 259 of the Act;

AND WHEREAS:

During the policy review of policy item #50.00, Interest, of the RS&CM, the Worker and Employer Services Division of WorkSafeBC deferred decisions on whether interest was payable where it appeared the blatant Board error test or the provisions in the Act were not met;
AND WHEREAS:

After the policy review was complete, the Worker and Employer Services Division of WorkSafeBC issued and implemented most deferred decisions on the entitlement to interest. However, there have been instances where these decisions were not made on deferred decisions;

AND WHEREAS:

To ensure that no workers are disadvantaged by the deferral in making a decision on the entitlement to interest, the effective date and application statement for policy item #50.00, Interest, of the RS&CM should be modified;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. Part 2 of resolution number 2013/11/20-01, made on November 20, 2013, attached to this resolution as Appendix 1, which states:

   2. This resolution is effective on January 1, 2014 and applies to all decisions made on or after January 1, 2014.

is repealed and replaced with:

2. This resolution is effective on January 1, 2014 and applies to all decisions made on or after January 1, 2014 except where retroactive benefits under sections 17, 22, 23, 29 or 30 of the Workers Compensation Act have already been awarded and the initial adjudication on the question of entitlement to interest had been deferred prior to January 1, 2014.

2. This resolution constitutes a policy decision of the Board of Directors.

3. This resolution is effective immediately and applies to all decisions including appellate decisions.

DATED at Richmond, British Columbia, November 25, 2015.

By the Workers’ Compensation Board

_________________________________
GEORGE MORFITT, FCPA, FCA
CHAIR, BOARD OF DIRECTORS
APPENDIX 1

THE WORKERS’ COMPENSATION BOARD OF BRITISH COLUMBIA

RESOLUTION OF THE BOARD OF DIRECTORS

RE: INTEREST ON COMPENSATION

WHEREAS:

Pursuant to section 82 of the Workers Compensation Act, RSBC 1996, Chapter 492 and amendments thereto (“Act”), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

The Act provides express entitlement to interest only in the situations covered by sections 19(2)(c) and 258;

AND WHEREAS:

Policy item #50.00, Interest, in the Rehabilitation Services Claims Manual, Volumes I and II (“RS&CM”), provides for the payment of interest where interest is payable under sections 19(2)(c) and 259 of the Act along with where there was a blatant Board error that requires a retroactive payment;

AND WHEREAS:

The Policy, Regulation and Research Division has undertaken stakeholder consultation on the payment of interest on compensation benefits and has advised the Board of Directors on the results of the consultation.
THE BOARD OF DIRECTORS RESOLVES THAT:

1. Amendments to policy item #50.00, Interest, of the RS&CM as attached to this Resolution are approved.

2. This resolution is effective on January 1, 2014 and applies to all decisions made on or after January 1, 2014.

3. This resolution constitutes a policy decision of the Board of Directors.

DATED at Richmond, British Columbia, November 20, 2013.

By the Workers’ Compensation Board

GEORGE MORFITT, FCA
CHAIR, BOARD OF DIRECTORS
#50.00 INTEREST

With respect to compensation matters, the Act provides express entitlement to interest only in the situations covered by sections 19(2)(c) and 258. In these situations, the Board will pay interest as provided for in the Act (see policy items #55.62 and #100.83).

The Board has discretion to pay interest in situations other than those expressly provided for in the Act. In these situations, interest may be paid subject to the following conditions:

- The retroactive payment is:
  - To a worker or employer in respect of a wage loss payment provided under sections 29 and 30 of the Act.
  - To a worker or employer in respect of a permanent disability lump sum payment provided under sections 22 and 23 of the Act.
  - To a dependant of a deceased worker in respect of a payment provided under section 17 of the Act.
  - It has been determined that there was a blatant Board error that necessitated the retroactive payment. 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.
  - 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). During the first 6 months of a year interest must be calculated at the interest rate as at January 1. During the last 6 months of a year interest must be calculated at the interest rate as at July 1.

For practical reasons, certain mathematical approximations may be used in the calculations.
The rate of interest provided in this policy will also be used in the calculation of overpayments as outlined in policy item #48.42.

**EFFECTIVE DATE:**
- January 1, 2014
- March 1, 2006

**HISTORY:**
- January 1, 2014 – Policy changes to reflect the removal of the blatant Board error test were made effective January 1, 2014.
- March 1, 2006 – Amendments to provide for the payment of interest to the dependants of deceased workers in respect of retroactive section 17 payments that are the result of a blatant Board error. Applied to all decisions, including appellate decisions, made on or after March 1, 2006.

**APPLICATION:**
- Applies to all decisions, including appellate decisions, made on or after March 1, 2006.
- Applies to all decisions made on or after January 1, 2014.
#50.00 INTEREST

With respect to compensation matters, the Act provides express entitlement to interest only in the situations covered by sections 19(2)(c) and 258. In these situations, the Board will pay interest as provided for in the Act (see Item C8-61.10 and policy item #100.83).

The Board has discretion to pay interest in situations other than those expressly provided for in the Act. In these situations, interest may be paid subject to the following conditions:

- The retroactive payment is:
  - To a worker or employer in respect of a wage loss payment provided under sections 29 and 30 of the Act.
  - To a worker or employer in respect of a permanent disability lump sum payment provided under sections 22 and 23 of the Act.
  - To a dependant of a deceased worker in respect of a payment provided under section 17 of the Act.

- It has been determined that there was a blatant Board error that necessitated the retroactive payment. 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 known that it was making the error at the time, it would have caused a change to 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.

- 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). During the first 6 months of a year interest must be calculated at the interest rate as at January 1. During the last 6 months of a year interest must be calculated at the interest rate as at July 1.

For practical reasons, certain mathematical approximations may be used in the calculations.
The rate of interest provided in this policy will also be used in the calculation of overpayments as outlined in policy item #48.42.

EFFECTIVE DATE: January 1, 2014
June 1, 2009 — Delete references to Board officers.

HISTORY: January 1, 2014 — Policy changes to reflect the removal of the blatant Board error test were made effective January 1, 2014.
June 1, 2009 — Delete references to Board officers.
March 1, 2006 — Amendments to provide for the payment of interest to the dependants of deceased workers in respect of retroactive section 17 payments that are the result of a blatant Board error. Applied to all decisions, including appellate decisions, made on or after March 1, 2006.

APPLICATION: Applies on or after June 1, 2009. Applies to all decisions made on or after January 1, 2014.