

Noteworthy Decision Summary

Decision: WCAT-2015-00701 **Panel:** Susan Marten **Decision Date:** February 27, 2015

Payment of Interest - Policy item #50.00 of the Rehabilitation Services and Claims Manual, Volume II – Revised Policy Effective January 1, 2014

This decision is noteworthy for its analysis of the amendments effective January 1, 2014 to policy item #50.00, *Interest*, of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II).

In a January 22, 2014 decision, the Workers' Compensation Board, operating as WorkSafeBC (Board), denied the payment of interest on the worker's retroactive compensation payments. A Review Division decision confirmed the Board's decision. On appeal, the WCAT panel noted that prior to December 31, 2013 policy item #50.00 of the RSCM II provided for payment of interest under situations covered by sections 19(2)(c) and 258 of the *Workers Compensation Act* (Act), as well as where there was a blatant Board error that necessitated the retroactive payment. Section 19(2)(c) of the Act pertains to the circumstance of a surviving spouse of a deceased worker (fatal claims). Section 258 of the Act relates to retroactive benefits flowing from Review Division decisions that were deferred pending an appeal to WCAT.

As of January 1, 2014, policy item #50.00 of the RSCM II was amended to remove the authority to pay interest where there was a blatant Board error for decisions made on or after that date. The amended policy provides that interest is only payable as provided for in the Act under sections 19(2)(c) and 258. The WCAT panel found that as the Board's decision was made after January 1, 2014 and the worker's situation was not one that is set out in either of these sections of the Act, he was not entitled to the payment of interest.

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Susan Marten, Vice Chair

Introduction

- [1] In a January 22, 2014 decision, the Workers' Compensation Board, operating as WorkSafeBC (Board), denied the payment of interest on the worker's retroactive compensation payments.
- [2] The worker requested a review of the January 22, 2014 decision. In a May 26, 2014 Review Division decision (*Review Reference #R0170563*) the review officer confirmed the January 22, 2014 decision.
- [3] The worker has appealed the May 26, 2014 Review Division decision to the Workers' Compensation Appeal Tribunal (WCAT).
- [4] The worker represents himself in the appeal. The employer is not participating in the appeal.

Issue(s)

- [5] The issue is whether the worker is entitled to interest on the retroactive compensation benefits provided to him in December 2013.

Jurisdiction and Procedure

- [6] The appeal was filed with WCAT under section 239(1) of the *Workers Compensation Act* (Act), which provides for appeals of final decisions by review officers regarding compensation matters, subject to the exceptions set out in section 239(2) of the Act.
- [7] WCAT has exclusive jurisdiction to inquire into, hear, and determine all those matters and questions of fact, law, and discretion arising or required to be determined in an appeal before it (section 254 of the Act). It is not bound by legal precedent (subsection 250(1) of the Act). WCAT must make its decision on the merits and justice of the case, but, in so doing, it must apply a policy of the board of directors of the Board that is applicable in the case (subsection 250(2) of the Act), save for specific circumstances set out in section 251 of the Act. The *Rehabilitation Services and Claims Manual, Volume II*, contains the published policy applicable to this appeal, as outlined below. Subsection 250(4) provides that in an appeal regarding the compensation of a worker WCAT must resolve the issue in a manner that favours the worker where evidence supporting different findings is evenly weighted.

- [8] This is an appeal by way of rehearing. WCAT has jurisdiction to consider new evidence, and to substitute its own decision for the decision under appeal. WCAT has inquiry power, including the discretion to seek further evidence, but is not obliged to do so. WCAT may confirm, vary, or cancel the appealed decision or order.
- [9] The claim file evidence and the worker's correspondence to the Board concerning the payment of interest and the submissions provided on review and appeal included references to this claim and other claims. I have included references to those other claims as described in the worker's submissions summarized in this decision; however, the worker's appeal concerns the consideration of the payment of interest arising from the retroactive payment of benefits issued to him in December 2013 under this claim. The WCAT's *Manual of Rules of Practice and Procedure* (MRPP) at item #3.3.1 states WCAT has jurisdiction to address any issue determined in either the Review Division decision or the Board decision which was under review, subject to the statutory limits on WCAT's jurisdiction. The Board decision and the Review Division decision that underlie this appeal were specific to this claim. My decision is similarly specific to this claim. I also consider the evidence sufficiently complete to decide the appeal. For clarity, any comments made in this decision about another claim are made only where necessary as part of my review of information and are made in passing. They should not be seen in any way to be determinations on another claim.
- [10] The worker requested the appeal be heard in writing, through written submissions. The WCAT Registry made a preliminary decision that the appeal would proceed by way of written submissions and invited submissions. The worker provided written submissions. I am able to consider the appeal through a different procedure, including an oral hearing, if I consider it necessary. I have reviewed the issue, evidence, and submissions on the worker's file and presented to WCAT, and considered the rule and the other criteria set out in the MRPP at item #7.5. WCAT will normally conduct an appeal by written submissions where the issues are largely medical, legal, or policy based and credibility is not at issue. The appeal does not raise a significant issue of credibility or factual issues. The issues rest primarily on weighing the evidence and applying and interpreting the applicable law and policy. I am satisfied that an oral hearing is not necessary.

Background, Evidence, and Submissions

- [11] I have considered all the background, the claim file evidence, and the submissions provided. I confirm that I have reviewed and considered the submissions and evidence provided to the Review Division as well as those provided to WCAT. As the issue under appeal is very narrow, I will not set out in detail the evidence on the claim except as necessary to decide the issue and will refer in a summary way to the evidence and argument as it relates to my findings in this case.

- [12] In a September 18, 2013 decision, a case manager accepted the worker's claim under section 6(1) of the Act for an aggravation of a pre-existing condition of small vessel vascular obstruction in both hands. In June 4, 2014 decision, a case manager accepted the worker's left-sided Horner's Syndrome as a compensable consequence of the compensable left-sided sympathectomy the worker underwent in January 2014.
- [13] In December 2013, the Board provided the worker with a retroactive payment for wage loss benefits in the amount of \$49,222.80.
- [14] The worker wrote to the Board on December 16, 2013 to request the payment of interest because of blatant errors made by the Board in handling, investigating and adjudicating his injuries commencing on March 17, 2012. The worker stated the interest payment should be made available and paid to the injured worker for back-paid compensation and benefits. The worker indicated that the Board's actions included:
- holding private meetings with the disgruntled employer in their personal residence without the worker's presence and using the fallacious information acquired from that encounter as the official workplace visit;
 - erroneously initiating and adjudicating the first two claims on an invented diagnosis, namely Hand-arm vibration syndrome and bilateral lateral epicondylitis, which the worker did not suffer from and which existed in no medical form in any claim or in any submission by medical providers;
 - initiating a third failed claim;
 - informing the injured worker that he suffered from tennis elbow, bilateral lateral epicondylitis, when he had sustained thermal injuries to both hands that the Board accepted as fact on September 18, 2013;
 - judicial decision-making without awaiting medical findings and records from specialists;
 - ignoring the attempts of the attending physician (Dr. Patel), who tried multiple times and in multiple ways to personally contact the Board for assistance with the worker's case;
 - the review officer used her own personal judgment to make medical conclusions and determinations.
- [15] The worker also stated that WCAT (WCAT-2013-03063 was enclosed with the worker's submission to the Review Division) accepted these errors in their decision letter of November 4, 2013 and alluded to them as erroneous. The worker requested that interest be payable since the start of the original claim, from March 17, 2012 on all monies owed until the Board caught up with proper payments, which were still in arrears at the time of his correspondence. The worker also stated that an impartial adjudicator would be made available on another claim after the extremely biased actions of a case manager.
- [16] In a January 26, 2014 submission to the Review Division, the worker's presented a chronological order of events in explanation of the reasons why interest payments were

pursued in accordance with policy item #50.00 for a blatant Board error. He included examples of a blatant Board error as set out in a Board practice directive. I confirm that I have reviewed the submissions provided.

- [17] The worker attached documents to his Review Division submission, including the complaint to and documentation from the Board's fair practices office and the Employment Standards office, medical documentation, his January 8, 2014 correspondence to the case manager, information on his employment with the employer and other employers, the WCAT decision, and documentation and determinations made on other claims.
- [18] The worker's notice of appeal to WCAT stated the time frame indicated by the appeal officer was incorrect. The interest should be paid between March 17, 2012 and December 28, 2013 when the Board issued \$45,000 for back payment. In addition, the Board claimed their policy for interest changed on January 1, 2014 but the time in question was prior to that time. The injury reporting date until the lump sum retroactive payment was when the policy was still in effect.
- [19] The worker attached correspondence from a bank concerning a change in his signature to "X" and an excerpt from medical report from a vascular surgeon.
- [20] The worker provided a July 24, 2014 submission to WCAT that can be summarized, in brief and in part, as follows:
- the WCAT decision brought a final and favorable decision in his favor; however, the Board continued to operate with poor quality of service and proved to be unresponsive to any form of contact and not open to any reason or discussion. He hired a lawyer who was representing him at the Review Division for another Board matter.
 - The Ombudsman had communicated that while usually only operating after the WCAT level, due to the nature of previous events they would open an investigation at the Board if there were any further blatant discriminatory actions.
 - The worker's review was not emotionally charged and did not require medical investigations as it was based on a basic charge of blatant error which the Board admitted to in their decision dated May 26, 2014.
 - The Review Division opened itself up to legal liability and responsibility for his financial distress when the review officer stated he appreciated the worker's submission that the Board should have allowed his claim earlier and that the delay in his receipt of benefits was due to how the Board conducted the investigations of his condition. The review officer also acknowledged the Board applied the concept of blatant Board error in coming to its decision to deny interest.

- His claim was filed on March 20, 2012 and accepted 18 months later on September 18, 2013. The Board then again delayed paying him benefits for over two months. Due to fraudulent activities by his former employer and a wage rate officer who had never experienced this situation, it took the Wage Rate Division over two months to begin to plan. After all the communication and work, the wage rate officer abandoned the plan and opted for her own opinion instead of waiting for proper information. She set an unfair wage rate. She said the Board was legally liable to start paying something and she was out of further time to invest in his case.
- The Board's cheque in the amount of \$49,220.80, dated December 13, 2013, had to be approved by the director. It was not released until December 24, 2013.
- He had no income from March 17, 2012 until the cheque arrived in the mail. He was handicapped and injured and had to pay for his own medical expenses during that time. He was refused access to fraudulent paperwork filed to the government of Canada by his employers.
- The Board provided no medical assistance, funds, or help in any way when he needed the money the most. For 18 months, while he was undergoing experimental neurological surgeries that were now banned in their country of origin and left him permanently handicapped, he was forced to fend by himself with no income. He lived off the charity of his family as they did basic daily living chores for him, paid his bills, and provided him with a place to live. He did not know what would have happened to him if not for them. The Medical Services Plan eventually hired an adjudicator and he won his case, but they communicated that their program was not retroactive and he would be out all the premiums and monies he paid during that time. Since then the Board had not paid for a single requested service even though his surgeons had written saying he needed help with basic daily living chores. The worker referred to his December 16, 2013 correspondence. A new case manager issued a decision not to pay interest on December 27, 2013, without reading the WCAT decision. The worker appealed her decision and the Review Division agreed with his claim, as stated above.
- The review officer agreed with his argument but noted that as of January 1, 2014 the Board no longer paid interest on blatant errors. The worker stated that why the Board had authority to lift itself above guilt for error while all other organizations, institutions, and companies operating in Canada had to be liable for their errors was a matter for a higher court and not his opinion. Regardless, his case was in reference to the activity and decisions of the Board from March 20, 2012 to December 2013 when the Board was liable for such expenses. The Board was liable to pay damages and interest for their blatant errors.

[21] The worker attached a copy of the documentation concerning the payment of \$49,222.80 and excerpts from his claim, and communication details concerning this claim and another claim.

Reasons and Findings

- [22] For the reasons that follow, I find the worker is not entitled to payment of interest on the retroactive payment of \$49,222.80.
- [23] Section 82 of the Act provides that 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.
- [24] Policy item #50.00 sets out the Board's policy with regard to the payment of interest. The board of directors revised this policy item effective January 1, 2014.
- [25] Prior to December 31, 2013 Board policy item #50.00 provided for payment of interest, in part, as follows¹:

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.

¹ Policy item #50.00 was amended in 2006 to include payment of interest on the retroactive portion of spousal benefits (section 17).

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.²

[26] As of January 1, 2014, Board policy item #50.00 provided for payment of interest, in part, as follows:

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).

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.

[27] The effective date of the amended policy item #50.00 was January 1, 2014. The effect was to remove any discretionary provision for the payment of interest, including the payment of interest under the blatant Board error test. The history noted in the amended policy item included the statement that the January 1, 2014 policy changes reflected the removal of the blatant Board error test. The amendments applied to all decisions made on or after January 1, 2014. The review officer's decision informed the worker of the policy change, that the blatant Board error test was no longer applicable, and the newer version of policy item #50.00 applied to his situation.

[28] The worker submits that the time in question occurred before January 1, 2014; however, the policy change applies to the date of the Board's decision and whether it was made on or after January 1, 2014. The Board's decision denying the worker the payment of interest was made on January 22, 2014. It is therefore the version of policy item #50.00 in effect as of January 1, 2014 that applies to the worker's request for the payment of interest.

[29] The worker's submissions referred to Board policy concerning the payment of interest, with reference to the policy provisions that interest may be payable where there was a blatant Board error that necessitated a retroactive payment of compensation benefits. The worker's submissions also referred to what he submits were blatant errors made by

² All quotations in this decision are reproduced as written unless otherwise noted.

the Board. However, that test is not applicable to the worker's circumstances as it was expressly removed in the amendment to policy that was effective January 1, 2014.

- [30] The Board's policy on interest as of January 1, 2014 limits the payment of interest to only those situations expressly provided for in sections 19(2)(c) and 258 of the Act. Therefore, the worker's circumstance must meet the situations covered in those sections of the Act before interest can be paid.
- [31] Section 19(2)(c) of the Act pertains to the circumstance of a surviving spouse of a deceased worker (fatal claims).
- [32] Section 258 of the Act pertains to the implementation of a Review Division decision that results in the need for a payment to be made. Section 258(5) relates to retroactive benefits flowing from Review Division decisions that were deferred pending an appeal to WCAT.
- [33] Policy item #50.00 also refers to policy item #C8-61.10, which discusses the provisions of section 19(2)(c) of the Act, and to policy item #100.83, which discusses the implementation of a Review Division decision that requires payments to be made to a worker or a deceased worker's dependants.
- [34] The worker's situation is not one that is set out in either of the above-noted sections of the Act or policy provisions. He is therefore not entitled to the payment of interest.

Conclusion

- [35] I confirm *Review Reference #R0170563*. I deny the worker's appeal. I find that the worker is not entitled to the payment of interest.
- [36] There has been no request for reimbursement of expenses. Therefore, I make no order in that regard.

Susan Marten
Vice Chair

SM/tv/ml