

## **Easttum, Denise**

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### **INTEREST (RCW 51.52.135)**

#### **Time-loss compensation**

The Board may fix interest on time-loss compensation benefits that were payable while the appeal was pending if the resolution of the appeal results in the reversal of an order rejecting the claim. ....*In re Denise Easttum*, BIIA Dec., 05 17635 (2006)

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON**

**IN RE: DENISE A. EASTTUM** ) **DOCKET NO. 05 17635**  
 )  
**CLAIM NO. W-668315** ) **ORDER FIXING INTEREST**

An appeal was filed by the claimant, Denise Easttum, on July 5, 2005, from an order of the Department of Labor and Industries dated June 24, 2005. In its order of June 24, 2005, the Department affirmed its order of February 17, 2005, in which the Department denied the claim because the worker's condition was not the result of the injury alleged; the worker's condition is not the result of an industrial injury as defined by the industrial insurance laws; and the worker's condition is not an occupational disease as contemplated by RCW 51.08.140. On January 30, 2006, we issued an Order on Agreement of Parties in which the order of June 24, 2005 was reversed and the matter remanded to the Department of Labor and Industries with direction to issue an order accepting the claim as an industrial injury occurring on September 8, 2004.

After issuance of the Order on Agreement of Parties, we requested information from the self-insured employer that would allow us to calculate interest on any time-loss compensation benefits that may have been paid as a result of the allowance of the claim. The self-insured employer responded with a letter indicating that there would be no interest owing since the Board's order only addressed claim allowance and did not award or affirm any award for temporary total disability benefits. The claimant's attorney received a copy of that letter and responded, indicating that time-loss compensation benefits were paid due to the allowance of the claim brought about by the litigation at the Board. Finally, in response to this letter, the self-insured employer, filed another letter indicating that the appeal did not involve a claim for temporary total disability benefits as contemplated by RCW 51.52.135 and, therefore, it was inappropriate to calculate interest on any time-loss compensation benefits paid.

Pursuant to RCW 51.52.135 and WAC 263-12-160, a worker is entitled to interest if the worker prevails in an appeal regarding a claim for temporary total disability. After this appeal was resolved, the claimant obtained retroactive temporary total disability benefits for a period of time that this appeal was pending before the Board. The worker was paid these benefits for the period February 21, 2005 through August 16, 2005. The worker would not have been entitled to these benefits if she had not prevailed in the appeal from the order rejecting her claim. Although our Order on Agreement of Parties did not direct payment of the temporary total disability benefits, the temporary total disability benefits were paid as a direct result of the Order on Agreement of Parties that directed allowance of the claim.

We do not interpret the language of RCW 51.52.135 as requiring that the order issued in resolution of an appeal denying a claim must also direct the payment of temporary total disability benefits. The statute allows for the payment of interest if the outcome of the appeal allows the worker to claim and receive total temporary disability benefits for periods before or during the period the appeal was pending. If the worker had not prevailed in having her claim allowed, she would not have been able to make a claim for temporary total disability benefits as contemplated by the statute. The claim for temporary total disability benefits could not be properly administered until the worker prevailed in having the claim allowed. Accordingly, we determine that the worker prevailed in this appeal by the worker regarding a claim for total temporary disability compensation within the meaning of RCW 51.52.135.

1 It is therefore ORDERED that the self-insured employer, ESD #123 Worker's Compensation  
2 Trust, pay interest to the worker, Denise A. Easttum, in the sum of \$636.95. This amount shall be  
3 paid in full to the worker and is not subject to any claim for attorney's fees.

4 DATED: June 13, 2006.

5 BOARD OF INDUSTRIAL INSURANCE APPEALS

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8 /s/ \_\_\_\_\_  
THOMAS E. EGAN Chairperson

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11 /s/ \_\_\_\_\_  
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13  
14 /s/ \_\_\_\_\_  
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