

Brunker, Deanna

INTEREST (RCW 51.52.135)

Time-loss compensation

The Board may fix interest on time-loss benefits not specifically ordered by the Board if payment of the benefit was delayed due to the appeal. ...*In re Deanna Brunker*, BIA Dec., 06 18865 (2007)

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

IN RE: DEANNA M. BRUNKER)	DOCKET NO. 06 18865
)	
CLAIM NO. SA-68196)	ORDER DENYING EMPLOYER'S MOTION TO RECONSIDER ORDER FIXING INTEREST
)	

The employer, Wal-Mart Stores, Inc., filed an appeal on September 8, 2006, from an order of the Department of Labor and Industries dated June 22, 2006. In its order, the Department canceled an order dated May 18, 2006, and determined that the claim was allowed for an injury that occurred on April 12, 2006. The Department directed the self-insured employer to pay all medical and time-loss benefits as may be indicated in accordance with the industrial insurance laws. On April 12, 2007, the self-insured employer moved to dismiss the appeal. On April 16, 2007, we issued an Order Dismissing Appeal. On June 20, 2007, we issued an order directing the self-insured employer to pay interest to the worker in the sum of \$725.52, and to her dependents in the sum of \$236.29. On July 17, 2007, we received the self-insured employer's request to reconsider our order paying interest. The worker and the Department were given an opportunity respond to the employer's request and no response was received. After consideration of the employer's request, the record of this claim, and the record of this appeal, we determine the that the employer's request shall be denied.

In requesting that we reconsider our Order Fixing Interest, the employer states "[t]his case was an appeal from an allowance order, thus, there was no issue regarding any particular benefit owing to the claimant. In this circumstance, payment of interest pursuant RCW 51.52.135 does not apply." While it is true that the Board's order did not specifically direct the self-insured employer to pay temporary total disability benefits, the effect of the employer's dismissal of its appeal was to finally resolve the issue of allowance of the claim. The worker made an application to obtain benefits, including possible time-loss benefits, under the Industrial Insurance Act. When allowance of the claim is at issue in an appeal, it follows that the worker's receipt of any benefits are dependent on the outcome of the appeal. Temporary total disability benefits subsequently paid for periods prior to the self-insured employer's appeal, and paid for periods while the appeal was pending, were delayed as a result of the self-insured employer's appeal and ultimately obtained as a result of the outcome of that appeal.

To deny the worker interest on those delayed temporary total disability benefits because they were not specifically directed to be paid by our order would require an extremely strict construction of RCW 51.52.135, which provides that interest is to be fixed when the worker or beneficiary prevails in an appeal by the employer to the Board. Such construction would mean, for example, that a worker who successfully defends an order allowing the claim, or a reopening of a claim, would never be entitled to an award of interest unless our order specifically directed the payment of temporary total disability benefits, or in a worker's appeal, it would mean that a worker who appeals an order rejecting, closing, or denying reopening of a claim would never be entitled to an award of interest unless our order specifically directed the payment of temporary total disability benefits. We do not believe the Legislature contemplated such a construction. Rather, we look to whether the payment of temporary total disability benefits was delayed by the decision from which the claimant or the employer appealed and whether the payment logically follows from the ultimate resolution of the appeal. Here, it follows that payment of temporary total disability benefits followed the self-insured employer's dismissal from its appeal of an order allowing the claim. This is a construction we have always given RCW 51.52.135, and this is a construction we will continue to apply.

Our review the claim file also supports our conclusion that the payment of temporary total disability benefits was delayed due to this appeal. The Department record contains an IME report

1 from George Harper, M.D., dated July 12, 2006. In this medical examination, requested by the self-
2 insured employer, he agrees with the worker's work restrictions given by the attending physician.
3 At that time, the attending physician was listed by the Department as Spokane Emergency
4 Physicians. One of those physicians, Marshall Thompson, M.D., indicated on May 4, 2006, that
5 Ms. Bruncker should not work until released by a physician. It is apparent that if claim allowance
6 had not been at issue, time-loss compensation benefits were payable. When we calculated interest
7 in this matter, we calculated interest on the delay of payment of time-loss compensation benefits
8 paid for the period April 23, 2006 through April 18, 2007. Interest began to accrue on June 22,
9 2006, the date of the Department order which the self-insured employer appealed. Interest was no
longer calculated on benefits received after the date of our Order Dismissing Appeal because it
could no longer be said at that time that the payment of benefits were delayed due to the appeal.
It's clear from this record that time-loss compensation benefits were delayed as a result of the self-
insured employer's appeal of the order allowing the claim.

10 The worker prevailed in this appeal filed by the employer regarding a claim for temporary
11 total disability compensation. Pursuant to RCW 51.52.135 and WAC 263-12-160, the worker is
12 entitled to interest on the unpaid amount of the award made as a result of the Board's final decision
13 and order after deducting attorney's fees. Accordingly, the self-insured employer's request for
reconsideration of our Order Fixing Interest is denied.

14 It is so ORDERED.

15 DATED: October 16, 2007.

16 BOARD OF INDUSTRIAL INSURANCE APPEALS

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19 /s/ _____
20 THOMAS E. EGAN Chairperson

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22 /s/ _____
23 FRANK E. FENNERTY, JR. Member

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25 /s/ _____
26 CALHOUN DICKINSON Member