

## **Brown, Walter**

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### **[INTEREST \(RCW 51.52.135\)](#)**

#### **Waiver impermissible**

The Board will not approve an agreement which provides that the worker waives the claim for interest or that attempts to define the amount of interest to be paid. Such agreements are not in conformity with the law. RCW 51.04.060. ...*In re Walter Brown, BIIA Dec., 96 4666 (1999)*

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

1     **IN RE: WALTER J. BROWN**                     )     **DOCKET NO. 96 4666, 96 4666-A**  
2   )   **96 4856 & 96 4952**  
3   )  
4   )     **ORDER DENYING MOTION TO RECONSIDER**  
5     **CLAIM NO. T-375152**                     )     **ORDER FIXING INTEREST**  
6

7     The appeal assigned Docket No. 96 4666 was filed by the self-insured employer, ITT  
8 Rayonier, Inc., on July 18, 1996, from an order of the Department of Labor and Industries dated  
9 May 24, 1996. The appeal assigned Docket No. 96 4666-A was filed by the claimant, Walter J.  
10 Brown, on July 29, 1996, from an order dated May 24, 1996. The appeal assigned Docket No.  
11 96 4856 was filed by the self-insured employer on July 25, 1996, from an order dated June 10,  
12 1996. The appeal assigned Docket No. 96 4952 was filed by the claimant on July 29, 1996, from an  
13 order dated June 10, 1996.  
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15     On May 19, 1997, the Board issued a Corrected Order on Agreement of Parties which  
16 reversed the orders of May 24, 1996, and June 10, 1996, and remanded the matter to the  
17 Department of Labor and Industries directing the self-insured employer to pay intermittent loss of  
18 earning power benefits for the periods November 24, 1991, through January 12, 1993, and  
19 February 7, 1994, through June 10, 1996, in the amount of \$50,000.00; to deny a penalty for failure  
20 to timely pay time-loss compensation for the period February 1, 1993, through January 2, 1994; to  
21 deny a penalty for failure to pay loss of earning power benefits for the period January 3, 1994,  
22 through May 24, 1996; to pay a permanent partial disability award equal to category 4, lumbosacral  
23 and/or dorso-lumbar impairment, and category 2, pelvic impairment, effective June 10, 1996; and to  
24 thereupon close the claim.  
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26     Pursuant to RCW 51.52.135, on January 29, 1998, we issued an Order Fixing Interest  
27 directing the self-insured employer, ITT Rayonier, Inc., to pay interest to the worker in the sum of  
28 \$4,081.29 because the worker had prevailed in the appeals filed by the self-insured employer. On  
29 March 3, 1998, we received a letter from the self-insured employer's counsel requesting  
30 reconsideration of the Board's Order Fixing Interest on the basis that the amount of \$50,000.00 to  
31 compensate the worker for intermittent loss of earning power from November 24, 1991, through  
32 January 12, 1993, and February 7, 1994, through June 10, 1996, also was intended to compensate  
33 the worker for any interest to which the worker would be entitled on any previously unpaid benefits.  
34 Neither the claimant nor the Department of Labor and Industries responded to the employer's  
35 motion.  
36  
37

38     Although the self-insured employer contends that the settlement was intended to include  
39 compensation in the form of interest to the worker, the record does not reflect that intention. The  
40 record on which the order was based was developed on April 21, 1997, before Industrial Appeals  
41 Judge Richard Mackey. It does not indicate the parties agreed that this settlement included  
42 compensation for interest. Unlike settlement agreements which might occur in the resolution of an  
43 ordinary civil lawsuit, agreements of parties at the Board will only be approved if found by the Board  
44 to be in conformity with the law and the facts. RCW 51.52.095(1). There is nothing in the record of  
45 these proceedings which suggests that the agreed settlement also entailed the waiver by the  
46 worker of any claim for interest which he might be entitled to receive under RCW 51.52.135.  
47 Indeed, had the parties attempted to provide under their agreement that the worker would waive his  
claim for interest, this Board would not have signed the Order on Agreement of Parties because this

1 Board believes to do so would not be in conformity with the law. See RCW 51.04.060. This also  
2 applies to agreements where parties attempt to make the payment of a defined amount of interest a  
3 specific provision of the agreement. We can't authorize such agreements because the amount of  
4 the interest is not certain until payment of the underlying award occurs. Clearly, an agreement that  
5 specifies the amount of interest will not necessarily reflect the amount the Board would calculate  
6 due to its statutory duty under RCW 51.52.135. For example, if the parties were to estimate the  
7 amount of interest, but payment does not occur when anticipated, the worker would be entitled to  
8 additional interest for the delay. This additional interest would have been waived had we  
9 authorized such an agreement. There is no statutory provision that allows the Board to enforce the  
10 date an agreed sum must be paid. For that reason, every agreement that specifies an amount of  
11 interest, including those that overtly "waive" interest, are considered by the Board as an  
12 impermissible waiver of rights to benefits under the act.  
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15 The worker prevailed in this appeal by the self-insured employer pursuant to RCW 51.52.135  
16 and WAC 263-12-160. The worker is entitled to interest on the unpaid amount of the award as a  
17 result of the Board's final decision and order after deducting attorney fees. It is therefore  
18 ORDERED that the self-insured employer's motion to reconsider the Order Fixing Interest dated  
19 January 29, 1998, is denied.  
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21 Dated this 19th day of July, 1999.  
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23 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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27 /s/ \_\_\_\_\_  
28 THOMAS E. EGAN Chairperson  
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32 /s/ \_\_\_\_\_  
33 FRANK E. FENNERTY, JR. Member  
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37 /s/ \_\_\_\_\_  
38 JUDY S. SCHURKE Member  
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