

# Practice Directive 1-39-2 (A)

## Payment of Interest

Effective May 1, 2003

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The Assessment Department will only pay interest on an overpayment of assessments in one of the following three situations:

- blatant Board error,<sup>1</sup>
- successful employer review<sup>2</sup> or appeal,<sup>3</sup> or
- under the Historical Relief of Costs project.<sup>4</sup>

### BLATANT BOARD ERROR

A “blatant Board error” is distinguishable from a “Board error”<sup>5</sup> in two significant aspects:

- (A) The error is offensively obvious, and
- (B) The error involves an exercise of reason.

A blatant Board error requires more than mere mechanical action or application of process. A clerical error, oversight, or a mere slip (transposed keystroke, for example) does not constitute a blatant Board error.

#### (1) THE TEST

A blatant Board error requires that each of the following must be established:

- (a) There was an error,<sup>6</sup>
- (b) The error was obvious,<sup>7</sup> in that the error can be identified without undue investigation,<sup>8</sup>
- (c) The error was overriding,<sup>9</sup> in that it worked to the employer’s actual disadvantage and a different result would have occurred but for the error,

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<sup>1</sup> The authority for such is Policy 1-39-2(d).

<sup>2</sup> Section 96.2 of the *Workers Compensation Act*.

<sup>3</sup> Section 259(2) of the *Workers Compensation Act*.

<sup>4</sup> Panel Resolution (98/04/23-03) dated 23 April 1998 and entitled “Re: Section 39(1)(e)”.

<sup>5</sup> As, for example, in Policy 1-37-3.

<sup>6</sup> The *Canadian Dictionary* defines error to mean “something wrong; what is incorrect; a mistake” and suggests that an error “implies a straying or deviation from a rule or course of action.”

<sup>7</sup> Policy 1-39-2 states that for “an error to be ‘blatant’ it must be an obvious . . . error”; and, as the denotation of “blatant” includes “obvious”, it implies that the error must be beyond merely obvious, it must be egregious.

<sup>8</sup> For example, the error must be obvious and apparent on the face of a document. If it requires any searching or testing to find the defect, the error is not obvious.

<sup>9</sup> “Overriding” is not included in the denotation of “blatant” and therefore serves to further distinguish a blatant Board error from a Board error. The *Canadian Dictionary* defines “override” to mean to “prevail over”. Thus, an

- (d) The error required the exercise of reason<sup>10</sup> or a determination between competing considerations<sup>11</sup> and was palpably violative of fact, judgment, or both.<sup>12</sup>

The nature of a blatant Board error must be determined as at the time of its making; that is, was the error blatant at the time of its making? That once discovered and with hindsight, the error can perhaps be so characterized is irrelevant. Moreover, the fact of the error itself must be distinguished from the effect of the error: a simple transposition of keystrokes may work to the employer's actual disadvantage; however, the outcome does not alter the simple nature of the error.

A different conclusion based on new evidence does not constitute blatant Board error. As well, a different conclusion based on a re-examination or re-weighting of existing evidence does not constitute blatant Board error, if the facts are reasonably capable of supporting the initial conclusion.

## **(2) PRESIDENTIAL DETERMINATION OF A BLATANT BOARD ERROR**

Given that there will be few blatant Board errors, and to ensure consistency in the interpretation of what constitutes blatant Board error, only the Board's President can determine that a blatant Board error has occurred.

If a Board officer believes a blatant Board error has resulted in an overpayment of assessments, the Board officer must advise the Director, Assessments of such by way of a memo. The memo must include the particulars of the case and the Board officer's reasons for believing that a blatant Board error has occurred. If the Director supports the Board officer's opinion, the Director, Assessments will note such support on the memo and forward it to the President for determination.

If the President determines that a blatant Board error has occurred, the President will note such determination and the date of such determination on the memo and return the memo to the Director, Assessments.

The Director, Assessments will then determine the date from which interest should be paid and return the memo to the Board officer for implementation.

## **SUCCESSFUL EMPLOYER REVIEWS OR APPEALS**

The Review Division or Workers' Compensation Appeal Tribunal ("WCAT") may order that an employer be entitled to interest on overpayment of assessments. In the absence of specific

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"overriding" error is one which either altered an outcome or which on a balance of probabilities may have altered an outcome.

<sup>10</sup> Policy 1-39-2 describes a blatant error as "a glaring error that no reasonable person should make." By necessary implication, the use of the term "reasonable person" imports an aspect of reasoning into the nature of the error.

<sup>11</sup> The inclusion in Policy 1-39-2 of the phrases "reasonable person", "the course of reasoning", and "misjudgment" implies an exercise of reason and distinguishes a blatant error from that of a clerical error or oversight or a mere slip.

<sup>12</sup> The extraordinary passage of time in implementing an application of process may obviate Part 4 of the test.

direction from Review Division or WCAT respecting the effective date, interest will be payable from the date the employer requested the review or filed the notice of appeal.

## **HISTORICAL COST RELIEF PROJECT**

Employers will be paid interest on cost relief obtained under section 39(1)(e) of the *Workers Compensation Act*, through the Historical Relief of Costs project, if:

- the wage loss concluded or pension was awarded (not including vocational rehabilitation expenditures) after 15 March 1978 and on or before 31 December 1993, and
- the employer requested 39(1)(e) cost relief in writing prior to 15 October 1998.

A reconsideration or a review or appeal decision may change an employer's entitlement on an Historical Project cost relief decision. Where a reconsideration or a review or appeal decision increases an employer's entitlement on a Historical Project adjudication, the Board will pay interest on the difference between the original principal owed and the varied principal amount. The Board will pay interest on any resulting refund effective from the date of the employer's written request for cost relief.

## **CALCULATION AND PROCESS**

In order to determine the amount of interest payable, a Board officer must:

1. Calculate by year or by quarter, as appropriate, the amount of the overpayment on which interest is payable. This is done by determining the difference between assessments recalculated after the account is corrected and the original assessment actually paid.
2. Complete the *Interest Calculation - Accrued Assessment Adjustments* form. When completing the form, the Board officer must note on the form:
  - a) the basis of the interest payment, e.g. blatant Board error.
  - b) the date of the decision to award interest. This can be the date
    - a Board officer determines that a blatant Board error occurred,
    - of a Review Division or WCAT decision, or on which
    - a Compensation Services Board officer decided to relieve costs on the claim.
  - c) the overpayment amounts, by year, for each year in which interest is payable (or by quarter as appropriate).
3. The officer should then forward the completed *Interest Calculation - Accrued Assessment Adjustments* form to the Actuarial department.

The Actuarial department will calculate the interest owing and return the completed form to the Board officer for implementation.

The Board officer will then manually enter the interest credit into the Accounts Receivable system; and the memo and form are then scanned to the employer's file.