Division of Longshore and Harbor Workers' Compensation (DLHWC)

CHAPTER 8-201 — INTEREST

1. **Purpose and Scope.** This Chapter presents the policy, procedures, and criteria for assessing interest, which is to be applied to all compensation payments which are delayed or past due. The Chapter also includes formulas and guidelines for computing interest by both the sliding interest and straight interest methods.
2. **Policy.**
   a. **Interest Allowed on a Debt.** Although the Longshore and Harbor Workers' Compensation Act is silent regarding application of interest on delayed compensation payments, such interest has been allowed under general law imposing interest for failure to pay a debt when it becomes due and payable.
   b. **Compensation Regarded as a Debt.** The Federal Courts have allowed the assessment of interest even though a particular statute contained no provision for interest. Workers' compensation benefits, which are delayed have been regarded as a debt, and, like any other past due debt, are liable for interest assessed at the legal rate.
   c. **Interest To Be Paid.** In the case of *Strachan Shipping Co. v. Wedemeyer*, 452 F.2d 1225 (5th Cir. 1971), the Circuit Court, affirming the district court and the deputy commissioner, held that if payments were unjustly withheld (and under the law, payments are wrongfully withheld if it is eventually determined that they should have been paid), the party who withheld payment should be compelled to pay lawful interest from the date the claimant's entitlement to the payment arose until the date the payment was actually made.
   d. **Mandatory Application of Interest.** The BRB and the Federal Courts have determined that payment of interest is mandatory. As a matter of general procedure, reference to application of this interest shall be included in all compensation orders awarding benefits after specifying the amount of the award, by including the following language: together with interest payable on each past due installment of compensation in accordance with the rate established under 28 U.S.C. Section 1961.
   e. **Timely Controversion does not relieve** the responsible party from paying interest on unpaid compensation.
3. **Interest Applicable to Unpaid Balance.**
   a. **Interest Applies Only to Unpaid Compensation.** If an EC has made partial payments, for example, under the terms of a state compensation law, or has made payments at a pay rate less than that which is determined to be correct, the interest applies only to the portion of the compensation which was not paid.
   b. **Payments Made Under a State Compensation Law** are to be given full credit. Where such payments do not equal those payable under the Longshore and Harbor Workers' Compensation Act, however, the interest applies to the difference between the amount of weekly payment made and that which is due for the number of weeks during which the correct amount was not paid.
4. **Title 28 U.S.C. Section 1961.** Interest is to be paid at the rate determined under 28 U.S.C.,

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Section 1961 as of the time an award is filed (or payment of past-due benefits without an award is made). *Grant v. Portland Stevedoring Co.*, 16 BRBS 267 (1984), **on recon**. 17 BRBS 20 (1985). It is a uniform rate based on the 52-week United States Treasury Bill yield immediately prior to the date the compensation order is filed in the office of the District Director. On a monthly basis, the NO mails the current applicable interest rate, as published by the Department of Treasury, to each DO. The rate changes every thirty days. The NO can be contacted by phone for specific requests.

5. **Two Formulas Used To Determine Interest**.
   a. **Most cases involving interest** fall into two major categories:
      1. Payments at an unchanging fixed compensation rate that are unpaid and every two weeks another payment accumulates during a period of entitlement; and,
      2. Payments at a certain rate are past due, and the period of entitlement at that rate has ended, regardless of whether additional payments at a different rate are due after the end of the entitlement period at the former rate.
   b. **The first situation** requires application of a formula which is designated as sliding interest. The second situation requires the application of a formula identified as straight interest.
6. **Sliding Interest Formula**.
   a. **This formula gives the accumulated bi-weekly interest** between the due dates of the first and last payments. It is based on the fact that the payments due accumulated on a regular basis, i.e., there was no break in the continuing of the entitlement and no change in the compensation rate.

      $$\text{INTEREST} = \frac{(B \times r) \times (p^2 - p)}{26 \times 2}$$

      Where: B = The value of one bi-weekly payment r = Rate of interest p = Number of bi-weekly payments at the rate of B past due 26 = Number of bi-weekly payments in one year
   b. **Application of Sliding Interest Formula**. Following injury to his right leg, claimant was paid appropriate temporary total disability compensation through December 25, 1986, at which time he returned to work. Maximum medical improvement was attained on February 11, 1987. On February 26, 1987, a compensation order, award of compensation was issued for 50% permanent partial loss of use of the right leg. The award covered a period of 144 weeks from February 12, 1987 to November 15, 1989, inclusive, at the rate of $70.00 per week in the amount of $10,080.00. The award was payable in bi-weekly installments of $140.00. The first biweekly installment of $140.00 covering the period February 12, 1987 to February 25, 1987, inclusive, was payable on February 26, 1987. The insurance carrier objected to the order, but was unsuccessful in its attempt to secure a stay. It failed to pay any of the first twenty-two bi-weekly payments from February 12, 1987 to December 16, 1987, inclusive. Payment was finally made on December 16, 1987 for this period. The

claimant's attorney requested that interest, at the rate of 6%, be added to the overdue payments. For this example: B = $140 r = .06 p = 22

$140 x .06	x	484 - 22	=	$8.40 x 462	=	$3,880.80	=	$74.63
26		2		52		52		

SLIDING INTEREST =	$ 74.63
ACCRUED PAST DUE COMPENSATION = 22 x 140 =	3,080.00
TOTAL PAST DUE PLUS INTEREST =	$3,154.63

7. **Straight Interest Formula**.
   a. **If the award period at a given rate** is completely expired prior to payment a different formula is used to compute the interest accrued following the due date of the last delayed payment at that rate. This type of interest is termed "straight" interest and a formula, based upon bi-weekly periods, must be used: INTEREST = A x n x v Where: A = Total value of award without interest n = Number of bi-weekly periods between date of final due installment and date of payment v = bi-weekly factor value, i.e., annual interest rate divided by 26 bi-weekly annual payments.
   b. **Application of the Straight Interest Formula**. For the sake of illustration, assume that all the payments in an award of 144 weeks are delayed and that payment of the entire amount of the award is made 19 weeks after the due date of the last payment (November 15, 1989). The date payment was actually made by the carrier would be March 28, 1990. Computation of the interest would be as follows: First compute the sliding interest using the formula in subparagraph 6.b, above: For this example: B = $140 r = .06 p = 72

140 x .06	x	5184 - 72	=	$42940.8	=	$825.78
26		2		52		

Sliding Interest = $825.78 The straight interest is based on the number of bi-weekly periods from November 15, 1989 to March 28, 1990 inclusive which is 9.5. The entire amount of the award is equal to 72 times $140 or $10,080. For this example: A = $ 10,080 n = 9.5 v = .0023076 (.06 divided by 26) $10,080 x 9.5 x .0023076 = $220.98 Straight Interest = $220.98 Summary:

   1. Accrued, past due compensation, covering the period of the award from February 12, 1987 to November 15, 1989, inclusive = 72 x $140.00 = $10,080.00
   2. Sliding interest on 72 biweekly payments due February 12, 1987 to November 15, 1989, inclusive = $825.78
   3. Straight interest on total award for period November 16, 1989 to March 28, 1990, inclusive = 220.98
   4. Past due payments plus interest equals the total of (1), (2) and (3) = $11,126.76.

8. **Computation of Interest in Permanent Total Disability and Death Cases and Others Where the Compensation Rate Has Changed During the Period of Past-Due Entitlement**.
   a. **Neither the sliding nor the straight formula** alone results in an accurate

calculation of interest due when applied to permanent total disability and death cases, because the bi-weekly rate of compensation changes each October 1. This is true except for those death cases where benefits are paid for the death of a claimant who was permanently totally disabled and died from unrelated causes (pre-1984 Amendment cases). In order to compute the correct interest due, where the rate of past-due compensation has varied, both formulas must be used as follows:

1. When an award is made, break down the unpaid bi-weekly benefits into yearly periods starting October 1 (or any date thereafter, if the first period is less than a year) and ending on September 30 (or other separate periods during which different rates were payable).
2. Use the sliding interest formula for each period separately and then add the results together.
3. Apply the straight interest formula separately to the total compensation due for each period, except the current one, and add these together.
4. The amount obtained from (2) added to the amount obtained from (3) equals the total interest due.

b. **For purposes of illustration let** us assume that an employee is injured in July of 1986 and is permanently totally disabled. The employee is awarded compensation plus interest, commencing on August 1, 1989. Assume that the initial bi-weekly rate is $596, and the interest rate is 6%. In October of 1986, 1987 and 1988, the rate changes to $642, $688 and $744 respectively. In order to fully understand the formula it is prudent that you construct a table like the following example listed below:

Period	Bi-weekly Compensation Rate	No. of Bi-weekly Payments Due	Total Benefits
08/06/86 - 09/30/86	$596	4	$ 2,384
10/01/86 - 09/30/87	$642	26	16,692
10/01/87 - 09/30/88	$688	26	17,888
10/01/88 - 07/31/89	$744	22	16,368

1. First calculate Sliding Interest using the

formula: $\dfrac{(B \times r) \times (p^2 - p)}{26 \times 2}$

Period 1

$$\frac{(\$596 \times .06)}{26} \times \frac{(16 - 4)}{2} = \$\,8.25$$

Period 2

$$\frac{(\$642 \times .06)}{26} \times \frac{(676 - 26)}{2} = 481.50$$

Period 3

$$\frac{(\$688 \times .06)}{26} \times \frac{(676 - 26)}{2} = 516.00$$

Period 4

$$\frac{(\$744 \times .06)}{26} \times \frac{(484 - 22)}{2} = 396.61$$

Total Sliding Interest = $1,402.36

2. Then calculate Straight Interest for all but the current period using the formula: A x n x v

Period 1	$ 2,384	x	74	x	.0023076	=	$ 407.10
Period 2	16,692	x	48	x	.0023076	=	1,848.89
Period 3	17,888	x	22	x	.0023076	=	908.12

Total Straight Interest = $3,164.11

3. Adding the results of (1) and (2) gives a total of $4,566.47, which is the interest due on the unpaid compensation of $53,332, this accumulated over four years.

c. **If interest has been paid** for all intents purposes and the amount appears approximately correct, and there is no inquiry from either party, it is not necessary for the CE to compute the precise amount due. For the most part courts leave the calculation and payment of interest awarded in judgments to the parties, so District Directors may allow the parties to calculate the interest due for unpaid compensation, as long as there is no dispute. However, in some instances the ALJ will delegate his authority and specify in the Order that all calculations of interest will be computed by the District Director.

d. **The interest formulas** are contained in the LCMS. Problems should be brought to the attention of the Director, DLHWC.

e. **There could well be discrepancy as** to whether the twenty percent penalty provisions of section 14(f) are applicable to interest payments. Reference *Nelson v. Stevedoring Services of America*, 29 BRBS 99 (1995) and *Sproull v. Director, OWCP*, 30 BRBS 49(CRT)(9th Cir. 1996), for conflicting opinions. Refer questions regarding such a conflict to the Director, DLHWC.