

# Practice Directive 40:70:40 (A)

## Payment of Interest

Effective March 15, 2002

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### Background

The Panel of Administrators has revised policy 40:70:40, Interest Rebates and Interest on Appeals, effective November 1, 2001. As per this revised policy (and in the case of successful employer appeals, as per section 96(7) of the Act), the Assessment department pays out interest only in three situations:

- 1) Cases of blatant Board error
- 2) Successful employer appeals
- 3) Historical Project cost relief under section 39(1)(e) of the Act

The Act states that the Board can pay interest only to workers and employers. Therefore, the Board cannot pay interest to private or other disability benefit plans, or to the estates of deceased workers or employers. Interest will not accrue for a period greater than twenty years preceding the date the Board (or the Appeal Division) determines interest is payable. Where interest is payable, the Board will apply the interest amount to the employer account, where it will first satisfy any outstanding balance prior to being made available to the employer as a special refund.

Cost relief applied through methods other than the Historical 39(1)(e) Project (as per the April 23, 1998 Resolution of the Panel of Administrators) is not subject to interest payment. In addition, situations where the processing of cost relief has been delayed as a result of administrative procedures are not subject to interest payment. An exception to this rule would only be made where blatant Board error (see 1), below) had occurred.

### 1) Blatant Board Error

#### 1) a) Adjudication of 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, Presidential approval is required to pay interest for blatant Board error.

Policy 40:70:40 defines what constitutes blatant Board error; the rules that govern the determination of a blatant Board error ensure that it occurs infrequently. Examples of blatant Board error include situations where:

- A Board Officer used information from the wrong employer's file to adjudicate an employer classification. Had the Board Officer disregarded the erroneous

information, it would have caused the Board Officer to change the course of reasoning and the outcome of the decision.

- The employer submitted evidence that clearly substantiated a different classification (or other) decision, and that evidence was not used to adjudicate the decision. It must be evident that:
  - The Board had received the missed information;
  - The Board Officer had missed the information at the time of adjudicating the decision;
  - The missed information was material to the decision, and;
  - Had the Board Officer reviewed the submitted information, it would have caused the officer to change the course of reasoning and the outcome of the decision.

The following are examples of situations that do not meet the test for blatant Board error:

- A decision of the Appeal Division, based on new evidence, or a re-weighing of existing evidence, does not constitute blatant Board error.
- Occasionally employers argue that, upon retrospective review of a decision, it might seem that a Board Officer did not correctly weigh or consider a piece of information in reaching the decision in question. Re-weighing of the evidence to reach another conclusion does not constitute a blatant Board error. Situations might occur where a Board Officer does not formally document his or her consideration of a specific piece of information; this does not constitute blatant Board error.

### **1) b) Process for Payment of Interest due to Blatant Board Error**

Where a Board Officer believes a blatant Board error occurred, necessitating an assessment adjustment, he or she should prepare a memo to his or her Director. The memo should outline the details of the case and reasons why the Board Officer believes a blatant Board error occurred. If the Director believes the request has merit, the Director would note this on the memo and forward it to the President for final approval.

If the President determines that a blatant error has occurred, the President will forward the memo and written approval, including the date of his or her decision, back to the Director, Assessments. The Director will then determine the date from which interest should be paid. Generally, in cases of blatant Board error, interest will be calculated from the date the error was made, to a maximum of twenty years preceding the date the Board determines interest is payable.

The Director will forward the memo back to the Board Officer, who should then follow these steps:

Step One: Calculate the principal (the amount of the overpayment) that the Board must pay interest on by year, or by quarter as appropriate. The principal in cases of blatant Board error is determined by the difference between assessments

recalculated after the account is corrected and the original assessment amount actually paid on the account.

Step Two: Complete the *Interest Calculation - Accrued Assessment Adjustments* form. Note on the form that interest is approved as payable in accordance with Board policy on blatant Board error. The Board Officer should list the overpayment amounts by year for each year interest is payable (or by quarter as appropriate). The Board Officer should note the date of the decision to award interest on the form, and which type of interest calculation Actuarial staff should use. (See Appendix A for details.) The date of the decision to award interest is the date the Board Officer determines blatant Board error has occurred. The officer should then forward the form to the Actuarial department.

Step Three: The Actuarial department will calculate the interest owing and return the completed form to the Board Officer for implementation.

Step Four: The Board Officer will then manually enter the interest credit into the A/R system.

Step Five: Copies of the completed memo and form should be scanned to the employer's file.

## **2) Successful Employer Appeals to the Appeal Division**

### **2) a) Adjudication of Successful Employer Appeals**

Employers who are successful in appeals to the Appeal Division under sections 96(6) or 96(6.1) of the *Act* (including appeals of assessments, classifications, and penalties) are also eligible for payment of interest under section 96(7), based on adjusted assessments as a result of the appeal.

### **2) b) Process for Payment of Interest Due to a Successful Employer Appeal**

Where interest is payable due to a successful appeal, the Board Officer should first determine the date that interest is to be paid from. In the case of employer appeals, interest will be payable from the date the Appeal Division received the Notice of Appeal, or from the date the Appeal Division directs.

The Board Officer should then follow these steps:

Step One: Calculate the principal (the amount of the overpayment) that the Board must pay interest on by year, or by quarter as appropriate. The principal in cases of successful employer appeals is determined by the difference between assessments recalculated after the account is adjusted as per the Appeal Division decision and the original assessment amount actually paid on the account.

Step Two: Complete the *Interest Calculation - Accrued Assessment Adjustments* form. Note on the form that interest is approved as payable in accordance with Board policy on successful employer appeals. The Board Officer should list the overpayment amounts by year for each year interest is payable (or by quarter as appropriate). The Board Officer should also note the date of the decision to award interest on the form, and which type of interest calculation Actuarial staff should use. (See Appendix A for details.) The date of the decision to award interest is the date of the Appeal Division decision. The officer should then forward the form to the Actuarial department.

Steps Three through Five: As per section 1), above.

### **3) Historical Cost Relief Project**

#### **3) a) Implementation of Historical Project Cost Relief Decisions**

Employers may be paid interest on cost relief obtained under section 39(1)(e) of the Act, through the Historical Relief of Costs Project:

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

#### **3) b) Process for Payment of Interest due to Historical Project Cost Relief**

Where interest is payable pursuant to section 39(1)(e) cost relief, the Board Officer should first determine the date interest is to be paid from; this is the date the Board received the employer's written request for cost relief.

The Board Officer should then follow these steps:

Step One: Calculate the principal (the amount of the overpayment) that the Board must pay interest on by year, or by quarter as appropriate. The amount of interest payable in cases of relieved claim costs is determined by the difference between assessments recalculated after the account's experience rating is adjusted and the original assessment amount actually paid on the account.

Step Two: Complete the *Interest Calculation - Accrued Assessment Adjustments* form. Note on the form that interest is approved as payable due to the Historical Relief of Costs 39(1)(e) project. The Board Officer should list the overpayment amounts by year for each year interest is payable (or by quarter as appropriate). The Board Officer should also note the date of the decision to award interest on the form, and which type of interest calculation Actuarial staff should use. (See Appendix A for details.) The date of the decision to award interest is the date the Compensation Services Board Officer decided to relieve costs on the claim in

question. The Assessment Board Officer should then forward the form to the Actuarial department.

Steps Three through Five: As per section 1), above.

### **3) c) Reconsiderations, Appeal Decisions and the Historical Project**

Reconsiderations and Appeal Division decisions may change an employer's entitlement on Historical Project cost relief decisions. Where a reconsideration 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. Where an employer's entitlement decreases as a result of a reconsideration or Appeal, the employer will owe the difference between the original principal amount and the new principal amount, plus the interest already paid out on that amount.

Where an employer's entitlement increases due to a varied Historical Project decision, the Board will pay interest from the date the employer requested the reconsideration, or filed their Notice of Appeal. As with the original decision, the date of the varying decision determines the manner in which the Board will pay out the additional interest. Such reconsiderations and Appeal decisions made prior to November 1, 2001 will pay interest using the old method; those made on or after November 1, 2001 will pay interest using the new method – see Appendix A for details. Appeal decisions that alter reconsideration decisions will also be treated as per the above process.

### **Appendix A: Method of Calculating Interest**

As per the resolution of the Board's Panel of Administrators that signed the new Assessment Policy 40:70:40 into effect, the Board uses the date of the decision to award interest to determine which calculation method to use. If the date of the decision to award interest is before November 1, 2001, the old interest calculation method will be used. If the date of the decision to award interest is on or after November 1, 2001, the new interest calculation method will be used.

#### Interest Calculation Method 1 (the old method):

The Board calculated compound interest, applying rates of return historically earned by the Board.

#### Interest Calculation Method 2 (the new method):

The Board will pay simple interest at a rate equal to the prime lending rate of the banker to the government. During the first six months of the year, Actuarial staff will calculate the interest at the rate as at January 1. During the last six months of the year, Actuarial staff will calculate interest at the rate as at July 1. The date of the decision to award interest serves to set the interest rate used in the new system. If the interest decision date is on or between January 1 and June 30, the January 1 rate will be used to calculate interest. If the interest decision date is on or between July 1 and December 31, the July 1 rate will be used.