

PART III
PROCEDURAL ISSUES

C. PAYMENT OF BENEFITS

1. GENERALLY; ASSESSMENT OF INTEREST ON PAST DUE BENEFIT INSTALLMENTS

After it is initially determined that claimant is entitled to benefits, the district director shall direct the employer to begin payment of benefits in accordance with 20 C.F.R. §725.522. See 30 U.S.C. §934; 20 C.F.R. §725.420(b). If a notified operator refuses to commence payment within 30 days from the date of the initial determination, benefits shall be paid by the Black Lung Disability Trust Fund in accordance with 20 C.F.R. §725.522. 20 C.F.R. §725.420(c); see generally **Pitts v. Director, OWCP**, 2 BLR 1-421 (1979); see also 30 U.S.C. §9501(d)(1)(A)(1).

A potentially responsible operator's due process rights are not denied by initiation of such payment since the operator has full opportunity to defend against the claim before a final award is entered. **Hicks v. Clinchfield Coal Co.**, 1 BLR 1-24 (1976). The employer does not escape liability for these prepaid benefits if the claimant has post-1969 coal mine employment. See 30 U.S.C. §§932, 934(b)(2), (4). Such payments, including interest, must be reimbursed to the Trust Fund following entrance of a final award of benefits. **Gaul v. Bethlehem Mines Corp.**, 1 BLR 1-911 (1978); **Fisher v. Bethlehem Mines Corp.**, 1 BLR 1-591 (1978); see also 20 C.F.R. §§725.420(c), 725.522.

With regard to benefits awarded pursuant to the Act as amended through 1972, interest may be assessed against the employer only from the date the employer became aware of the claim and had an opportunity to accept or controvert liability. **Honaker v. Jewell Ridge Coal Co.**, 2 BLR 1-947 (1980), *aff'd on other grounds mem.*, No. 80-1593 (4th Cir. Mar. 26, 1981)(unpub.).

It is noted that the Longshore Act does not provide for interest to be paid on past due benefits. Prior to July 1, 1982, the Black Lung Benefits Act was silent on the question of prejudgment interest although a regulation promulgated by the Secretary of Labor provided for pre-judgment interest. 20 C.F.R. §725.608(a), amended by 20 C.F.R. §725.608(a) (1984). The Act and the pertinent implementing regulations now expressly provide that for claims filed on or after the effective date of the Black Lung Benefits Amendments of 1981 interest shall begin to accrue 30 days after the date of determination that such an award should be made.

With regard to cases arising under the Reform Act, the Board has recently changed its interpretation of the issue of prejudgment interest. The Board in **Baldwin v. Oakwood Ash Coal Corp.**, 14 BLR 1-23 (1990) adopted the pertinent rule of the four circuits of the United States Courts of Appeals, that interest accrues from a date thirty days after the initial determination of entitlement in those claims filed before January 1, 1982. See **Bethlehem Mines Corp. v. Director, OWCP [Simila]**, 766 F.2d 128, 8 BLR 2-4 (3d Cir. 1985); **Stapleton v. Westmoreland Coal Co.**, 785 F.2d 424, 437-439, 8 BLR at 2-133-135(4th Cir. 1986), *rev'd on other grounds sub nom. Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 108 S.Ct. 427, 11 BLR 2-1 (1987), *reh'g denied*, 108 S.Ct. 787 (1988); **The Youghiogheny and Ohio Coal Co. v. Warren**, 841 F.2d 134, 139, 11 BLR 2-73, 2-79 - 2-80 (6th Cir. 1987); **Hawkins v. Peabody Coal Co.**, 11 BLR 1-157, 1-160 (1988), *aff'd on other grounds*, No. 89-336 (6th Cir. Jan. 2, 1990)(unpub.); **Peabody Coal Co. v. Blankenship**, 773 F.2d 173, 8 BLR 2-51 (7th Cir. 1985). The Board therefore overruled past Board holdings that required employer to reimburse the Trust Fund with interest from the date of onset of total disability or the filing date, if the onset of total disability could not be determined, *viz.*, **Jarrell v. C & H Coal Co.**, 9 BLR 1-52 (1986); **Cridler v. Peabody Coal Co.**, 6 BLR 1-1051 (1983); **Kuhar v. Bethlehem Mines Corp.**, 5 BLR 1-765 (1983), *vacated in part sub nom. Bethlehem Mines Corp. v. Director, OWCP*, No. 83-3226 (3d Cir. Aug. 22, 1983) (unpub.).

In construing the holding in **Simila, supra**, regarding accrual of interest, the Board emphasized that the "initial determination of liability" designated by the **Simila** court as triggering the thirty day period under Section 725.420(b) is not the same as the date of the "initial *finding* of eligibility" by the district director inasmuch as such a finding of eligibility is preliminary to the "initial *determination* of eligibility." **Forrai v. Zeni-McKinney-Williams Corp.**, 12 BLR 1-144 (1989). The Board has held that pursuant to Section 725.608(d), the Trust Fund cannot be held liable for payment of interest. See **Marple v. Jones & Laughlin Steel Corp.**, 7 BLR 1-580 (1984); *see also* **Meeks v. Director, OWCP**, 6 BLR 1-794 (1984); **Pezzetti v. Director, OWCP**, 8 BLR 1-464 (1986); comments in 43 Fed. Reg. 36,815 (Aug. 18, 1978).

The Board lacks subject matter jurisdiction to consider the issue of liability under 30 U.S.C. §932(b) and the Act requires review of such issues to rest with the federal district court. Once final eligibility and liability determinations are made, the benefit of agency expertise becomes irrelevant and jurisdiction is vested in the federal district court for the enforcement of the agency orders. Relying on the holding in **The Youghiogheny and Ohio Coal Co. v. Vahalik**, 970 F.2d 161, 16 BLR 2-94, 2-97 (6th Cir. 1992), the Board held that these consolidated cases did not involve claim determinations but rather enforcement and interest resulting from employer's delay in payment, thereby dismissing them for lack of subject matter jurisdiction. **Brown v. Sea "B" Mining Co.**, 17 BLR 1-115 (1993)(*en banc*).

CASE LISTINGS

[in survivor's case, interest accrues as of month of miner's death] **Harkey v. Alabama By-Products Corp.**, 7 BLR 1-26, 1-29 (1984).

[Third Circuit remanded case to Board to modify assessment of interest to conform with employer's position alleging that interest awarded be effective thirty days from date of initial determination of entitlement as claimant's notification to Court that she had no interest in outcome of case made this a case of intervening mootness] **Greenwich Collieries v. Director, OWCP [Thachik]**, 732 F.2d 343, 6 BLR 2-38 (3d Cir. 1984); see also **Gibraltar Coal Co. v. Haskins**, 749 F.2d 367, 7 BLR 2-115 (6th Cir. 1984).

DIGESTS

The interest rate to be applied to installments of past due compensation under the Longshore and Harbor Workers' Compensation Act (LHWCA) is the rate established by 28 U.S.C. §1961 for United States District Courts (tied to treasury bills). This should apply as well to interest on unpaid benefits under Title IV of the Black Lung Act. **Grant v. Portland Stevedoring Co.**, 16 BRBS 267 (1984), *aff'd on recons.*, 17 BRBS 20 (1985). Generally, where interest is allowable it is to be computed on a simple rather than a compound basis in the absence of authorization to the contrary. **Stoval v. Illinois Central Gulf Railroad Co.**, 722 F.2d 190, 192 (5th Cir. 1984). In a case involving prejudgment interest, the Board held that an award of compound interest was not justified, based on the facts of the case. **Santos v. General Dynamics Corp.**, 22 BRBS 226, 228 (1989).

The Board reversed the administrative law judge's decision and order finding employer not liable for additional interest calculated and held that on the facts of the instant case the doctrine of equitable estoppel and the doctrine of account stated and settled do not bar the Director from claiming the remaining interest owed the Black Lung Disability Trust Fund pursuant to 20 C.F.R. §725.608(b). In so doing, the Board closely analyzed the elements of equitable estoppel that the administrative law judge relied on in reaching his conclusions and the Board determined that the administrative law judge erred in finding them applicable. Further, with respect to the account stated and settled issue, the Board held that the claims examiner's mistake in calculating the interest owed by employer would not discharge the debt actually due the Trust Fund by employer. **Vahalik v. Youghiogheny and Ohio Coal Co.**, 15 BLR 1-43 (1991).

Jurisdiction of the reimbursement of principal and interest of interim payments and the collection of liens by the trust fund is vested in the Federal District Courts, not the Board, as it requires no administrative expertise and is unambiguously covered by the

language of 30 U.S.C. §934(b)(4)(A). **Balaban v. Duquesne Light Co.**, 16 BLR 1-120 (1992); see also **The Youghiogheny and Ohio Coal Co. v. Vahalik**, 970 F.2d 161, 16 BLR 2-34 (6th Cir. 1992).

Counsel's request for enhancement of an attorney fee award due to delay is, in essence, a request for interest to be paid by the Black Lung Disability Trust Fund. The Act and its implementing regulations, see 20 C.F.R. §725.608(d), do not authorize an award of interest against the Trust Fund. **Bennett v. Director, OWCP**, 17 BLR 1-72 (1992).

The Board lacks subject matter jurisdiction to consider the issue of liability under 30 U.S.C. §932(b) and the Act requires review of such issues to rest with the federal district court. Once final eligibility and liability determinations are made, the benefit of agency expertise becomes irrelevant and jurisdiction is vested in the federal district court for the enforcement of the agency orders. Relying on the holding in **The Youghiogheny and Ohio Coal Co. v. Vahalik**, 970 F.2d 161, 16 BLR 2-94, 2-97 (6th Cir. 1992), the Board held that these consolidated cases did not involve claim determinations but rather enforcement and interest resulting from employer's delay in payment, thereby dismissing them for lack of subject matter jurisdiction. **Brown v. Sea "B" Mining Co.**, 17 BLR 1-115 (1993)(*en banc*).

The holding in **Brown v. Sea "B" Mining Co.**, 17 BLR 1-115 (1993)(*en banc*) is applied to a case previously held in abeyance relying on the holding in **The Youghiogheny and Ohio Coal Co. v. Vahalik**, 970 F.2d 161, 16 BLR 2-94, 2-97 (6th Cir. 1992) and the language of 30 U.S.C. §932(b)(1). Pending motions were rendered moot and subject matter jurisdiction denied as enforcement of orders to reimburse principal and interest upon payments made by the Trust Fund vested in the district courts to determine issues collateral to the final disposition of a claim. **Ayers v. Peabody Coal Co.**, 17 BLR 1-124 (1993)(*en banc* order).

05/95