

Callahan, Teenamarie

PERMANENT PARTIAL DISABILITY (RCW 51.32.080)

Interest rate (RCW 51.32.080(4))

The interest rate in effect on the date of injury, not the rate in effect on the date of the award, applies to monthly installments of a permanent partial disability award. ...*In re Teenamarie Callahan, BIA Dec., 70 745 (1987)* [Editor's Note: The Board's decision was appealed to superior court under Kitsap County Cause No. 94-2-00202-5.]

RETROACTIVITY OF STATUTORY AMENDMENTS

Interest rate increases (RCW 51.32.080(4))

Where the statutory amendment increasing the rate of interest payable on the monthly installments of a permanent partial disability award became law after the date of the worker's injury, but before the permanent partial disability award was made, the rate of interest in effect on the date of injury applies. ...*In re Teenamarie Callahan, BIA Dec., 70 745 (1987)*

Scroll down for order.

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

1 **IN RE: TEENAMARIE CALLAHAN)** **DOCKET NO. 70,745**
2)
3 **CLAIM NO. H-668250)** **DECISION AND ORDER**
4

5 APPEARANCES:

6
7 Claimant, Teenamarie A. Callahan, by
8 William C. Decker, Esq.; Meade Brown, Legal Assistant
9

10 Employer, Children's Industrial Home of Tacoma,
11 None
12

13 Department of Labor and Industries, by
14 The Attorney General, per
15 Deborah E. Hilsman, Assistant
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17 This is an appeal filed by the claimant on June 3, 1985 from an order of the Department of
18 Labor and Industries dated April 25, 1985 which adhered to the provisions of a prior order dated March
19 22, 1985, which had been issued pursuant to a Board Order on Agreement of Parties dated February
20 25, 1985, and further directed that payments were to be made in monthly installments, the unpaid
21 balance of the permanent partial disability award to accrue interest at 6% per annum pursuant to RCW
22 51.32.080. The Department order is **AFFIRMED**.
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26 **DECISION**

27 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
28 and decision on a timely Petition for Review filed by the Department of Labor and Industries to a
29 Proposed Decision and Order issued on July 2, 1986 in which the order of the Department dated April
30 25, 1985 was reversed, and this matter remanded to the Department of Labor and Industries with
31 direction to close the claim pursuant to the Order of the Board of Industrial Insurance Appeals dated
32 February 25, 1985, with time loss compensation as paid, and permanent partial disability awards of
33 3% of the maximum allowable for unspecified disabilities for a labyrinthine disturbance, 75% of the
34 amputation value of the left leg above the knee joint with a short thigh stump, 75% of the amputation
35 value of the right leg above the knee joint with a short thigh stump, and 100% complete loss of hearing
36 in the right ear, less the previous advance on permanent partial disability, the balance of the
37 permanent partial disability awards to be paid in installments, plus 8% interest per annum on the
38 unpaid balance pursuant to RCW 51.32.080(4), as amended effective July 1, 1982.
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1 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no
2 prejudicial error was committed and said rulings are hereby affirmed.

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4 The legal issue presented by this appeal is: Which statutory rate of interest should be paid on
5 the unpaid balance of a permanent partial disability award under RCW 51.32.080(4) -- the rate in
6 effect on the date of injury or the rate in effect on the date the Department awarded the permanent
7 partial disability?
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10 On the date of the claimant's industrial injury, RCW 51.32.080(4) provided for payment of 6%
11 per annum interest on the unpaid balance of the permanent partial disability award. This section of the
12 statute was amended effective July 1, 1982, increasing the interest rate to 8% per annum. On June
13 13, 1984, the Department closed this claim with various awards which were increased on appeal to
14 the Board. The Department, by operation of RCW 51.32.080(4), awarded interest at 6% per annum,
15 on the unpaid balance of the permanent partial awards, contending that claimant's rate of interest is
16 controlled by the rate in effect on the date of injury. Claimant contends that the interest rate is
17 separate and unique from the award and should be controlled by the rate in effect when the award is
18 made.
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24 The law is well settled in this state that rights of claimants under the Workers' Compensation
25 Act are controlled by the law in force at the time of the person's injury, rather than by a law which
26 becomes effective subsequently. Thorpe v. Department of Labor and Industries, 145 Wash. 498
27 (1927); Foster v. Department of Labor and Industries, 161 Wash. 54 (1931); Sheldon v. Department
28 of Labor and Industries, 168 Wash. 571 (1932); Lynch v. Department of Labor and Industries, 19
29 Wn.2d 802 (1944); Barlia v. Department of Labor and Industries, 23 Wn.2d 126 (1948); Bodine v.
30 Department of Labor and Industries, 29 Wn.2d 879 (1948); Ashenbrenner v. Department of Labor and
31 Industries, 62 Wn.2d 22 (1963).
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35 Another basic rule of statutory construction is that a statute will be presumed to operate
36 prospectively only, and that it will not be held to apply retrospectively in the absence of language
37 clearly indicating such legislative intent. Lynch v. Department of Labor and Industries, *supra*.
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40 We must then first look to the legislative intent in enacting the July 1, 1982 amendment, as to
41 whether the Legislature intended to designate the law in effect at the time of injury or in effect when
42 the award is made as controlling the rate of interest. No specific intent is articulated in the statute
43 itself, nor is there any record of legislative discussion as to which interest rate would be applied to
44 injuries occurring before the effective date of the statute. However, keeping in mind the same rules of
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1 statutory construction cited by the court in Ashenbrenner, we must presume that the Legislature did
2 not intend to overturn settled legal principles by implication. We must further presume that the
3 Legislature was familiar with the rules, prior legislation, prior court decisions pertaining to prospective
4 and retrospective effect of legislation, and the law governing the amount of awards of workers'
5 compensation. We can only conclude that the Legislature intended no departure from the long
6 established "date of injury" rule.
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10 The crux of the claimant's argument is that interest on the unpaid balance of the permanent
11 partial disability award is separate and distinct from that award, and that therefore the interest is not a
12 benefit or right, but is a remedy applied now by statutory right for the loss of use of the money and that
13 an amendment in the interest rate is a change in "procedure." If the interest is not a right but is distinct
14 from and not a part of the award, claimant's argument is that an amendment to the section of the Act
15 setting out the interest rate should be applied without regard to the date of injury, contrary to
16 enforcement of other rights and benefits in the Industrial Insurance Act. We do not agree with
17 claimant's contention.
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22 RCW 51.32.080 is the section of the Industrial Insurance Act dealing with the schedule of
23 awards for specified and unspecified permanent partial disability. The right to interest on unpaid
24 balances of permanent partial disability awards is not contained in a separate or different part of the
25 Act. As stated by the court in State v. Houk, 32 Wn.2d at 684 and 685:
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28 Statutes in pari materia must be construed together. Statutes in pari
29 materia are those which relate to the same person or thing, or the same
30 class of persons or things; and in construing a statute or statutes, all acts
31 relating to the same subject matter or having the same purpose should be
32 read in connection therewith as together constituting one law. The object
33 of the rule is to ascertain and carry into effect the intent of the Legislature,
34 and it proceeds upon the supposition that the several statutes having to do
35 with related subject matters were governed by one spirit or policy, and
36 were intended to be consistent and harmonious in their several parts and
37 provisions. [Citing cases]
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39 We are persuaded that the interest awarded on unpaid balance of permanent partial disability awards
40 relates to the same subject matter as the permanent partial disability award itself. In other words, the
41 interest is part and parcel to the award. The interest provision is contained in the same provision of
42 the Act as scheduled permanent partial disability awards; like a permanent partial disability award, it is
43 unknown at the time of injury whether it will be made or in what amount; the interest is awarded
44 automatically and is not dependent on actions of the employer or the claimant; the interest is a right to
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1 a benefit vested at the same time as the award and governed by the same statute as the award; the
2 employer's experience rating and premium assessment is affected by both the award and the interest
3 paid. Therefore, we conclude that the Department construed all of the provisions of RCW 51.32.080
4 together and correctly concluded that the rate of interest is controlled by the rate or schedule in effect
5 on the date of injury, not by the rate in effect when the award was made.
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9 The amendment increasing the rate of interest does not change a practice or procedure or
10 remedy, and therefore does not fall within the exception recited in Nelson v. Department of Labor and
11 Industries, 9 Wn.2d 621 (1941). Workers' Compensation Acts are considered remedial in character.
12 Despite this remedial concept, permanent partial disability awards are consistently determined by the
13 law in effect on the date of injury. We are not persuaded that a claimant's right to interest is a
14 "remedy" any more than a claimant's right to a permanent partial disability award itself. Since
15 permanent partial disability award schedules are controlled by the schedule in effect on the date of
16 injury, so is the rate of interest controlled by the rate in effect on the date of injury.
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19 Proposed Findings 1, 2, 3 and 4, and Conclusion 1, are hereby adopted and incorporated
20 herein as the Board's final findings and conclusions. We enter the following additional Conclusions of
21 Law:
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25 **CONCLUSIONS OF LAW**
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- 27 1. The rate of interest on the unpaid balance of compensation for permanent
28 partial disability awards pursuant to RCW 51.32.080(4) is controlled by the
29 rate in effect on the date of injury.
- 30 3. The Department order of April 25, 1985 closing the claim with permanent
31 partial disability awards of 3% of the maximum allowable for unspecified
32 disabilities for a labyrinthine disturbance, 75% of the amputation value of
33 the left leg above the knee joint with a short thigh stump, 75% of the
34 amputation value of the right leg above the knee joint with a short thigh
35 stump, and a 100% complete loss of hearing in the right ear, less previous
36 advances on the permanent partial disability, and which ordered the
37 balance of the permanent partial disability awards paid in installments,
38 plus 6% per annum on the unpaid balance pursuant to RCW 51.32.080, is
39 correct and is affirmed.

40 It is so ORDERED.

41 Dated this 15th day of January, 1987.
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43 BOARD OF INDUSTRIAL INSURANCE APPEALS

44 /s/ _____

45 GARY B. WIGGS

Chairperson

46 /s/ _____

47 PHILLIP T. BORK

Member