

## **Courneya, Charles**

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### **APPEALABLE ORDERS**

#### **Department order fixing interest pursuant to order of superior court**

Where a worker prevailed in an appeal to superior court regarding a claim for temporary total disability, the responsibility for fixing interest lies with the court pursuant to RCW 51.52.135(3). The Board therefore does not have jurisdiction to review subsequent Department orders paying interest which were apparently entered pursuant to the order of the court. ...*In re Charles Courneya*, BIIA Dec., 89 0845 (1989)

### **INTEREST (RCW 51.52.135)**

#### **Fixing interest following superior court appeal**

Where the worker prevails in an appeal to superior court the Board no longer retains jurisdiction for the purpose of fixing interest in that appeal, unless specifically directed to do so by order or judgment of the court. RCW 51.52.135(3). ...*In re Charles Courneya*, BIIA Dec., 89 0845 (1989)

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

**IN RE: CHARLES LEO COURNEYA ) DOCKET NO. 89 0845**  
**CLAIM NO. H-760395 ) ORDER DENYING APPEAL**

An appeal was filed by the claimant, on March 14, 1989, from unidentified orders of the Department of Labor and Industries. The notice of appeal states:

Superior Court of Washington for King County Case No. 84-2-13127-6 time loss rate for Nov 1, 1981 thru May 5 1982 Interest Rate for that award, Payable under what WAC or RCW and time loss payable under what RCW

On March 22, 1989 we received an additional letter from the claimant which we have construed as an amended appeal. In this letter the claimant asks why he was paid interest on WAC 263-12-160 and not on RCW 51.52.135. He states that he is entitled to interest at the rate of twelve percent per annum on the unpaid amount of the award. He also alleges that time loss was paid on the state's average wage for 1980 and not on the average wage for 1982; that time loss was not paid on wages at the time of the injury (which he claims were \$2,740.00); and, that he was only paid for 185 days of time loss and there were 186 days during the period November 1, 1981 to May 6, 1982.

From a review of the Department record in this matter it appears that this claim was previously before the Board concerning an appeal filed by the claimant from an order of the Department dated January 12, 1984. That order paid time-loss compensation for the period February 13, 1981 through May 28, 1981, but denied time-loss compensation for the period November 1, 1981 through May 5, 1982. On July 17, 1984 our Industrial Appeals Judge entered a Proposed Decision and Order which sustained the order of the Department dated January 12, 1984. The Board issued an Order Denying Petition for Review on August 20, 1984, adopting the Proposed Decision and Order as the final order of the Board.

Thereafter, the claimant filed an appeal to the Superior Court for King County (Cause No. 84-2-13127-6). On August 22, 1988 the Superior Court, per the Honorable Jim Bates, entered a judgment in favor of the claimant:

For time loss owing for the period of November 1, 1981, to May 5, 1982, plus twelve percent (12%) interest, as required by law, from July 1, 1984, the date of the Department's final ruling in this matter, together with the statutorily-required percentage increase over the rate payable during the times claimed.

1 The judgment also ordered the payment of costs and attorney's fees to the claimant's attorney by the  
2 Department.  
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4 In response to the judgment of the Superior Court the Department entered an order dated  
5 September 8, 1988 paying time loss compensation for the period November 1, 1981 through May 5,  
6 1982 in the amount of \$5,468.17. On October 25, 1988 the Department issued a further order paying  
7 time-loss compensation for the same period in the amount of \$5,968.10, less deduction for the prior  
8 award, for a net additional award of \$499.13.  
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11 Apparently acting pursuant to the order of the Superior Court the Department also paid interest  
12 to the claimant. By an order dated October 3, 1988 the Department paid the claimant interest in the  
13 amount of \$4,287.92, in accordance with WAC 263-12-1260 (sic). By an order dated November 22,  
14 1988 the Department paid the claimant additional interest in the amount of \$391.33, in accordance  
15 with WAC 263-12-1260 (sic). By an order dated December 9, 1988 the Department corrected the  
16 WAC citation in the previous orders to WAC 296-12-160, which is the Board's rule governing the fixing  
17 of interest.  
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22 We believe this appeal by the claimant is from the four previously mentioned orders of the  
23 Department paying time-loss compensation for the period November 1, 1981 through May 5, 1982  
24 and awarding interest thereon. We have assigned Docket No. 89 1428 to the appeal as it relates to  
25 the orders of the Department paying time-loss compensation dated September 8, 1988 and October  
26 25, 1988. Since it is not clear from the record whether the Department paid time loss at the correct  
27 rate, that appeal will be granted, subject to proof of timeliness, by separate Board order. The appeal  
28 of the orders of the Department paying interest, dated October 3, 1988 and November 22, 1988, will  
29 be assigned Docket No. 89 0845. That appeal must be denied.  
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34 Since the worker prevailed in an appeal by the worker to the court regarding a claim for  
35 temporary total disability, he is entitled to interest at the rate of twelve percent per annum on the  
36 unpaid amount of the award, after deducting the amount of attorney fees. RCW 51.52.135(2). Under  
37 RCW 51.52.135(3), interest shall accrue from the date of the Department's order denying payment of  
38 the award.  
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41 RCW 51.52.135(3) also concludes that "The amount of interest to be paid shall be fixed by the  
42 board or court, as the case may be." We have consistently construed this language to mean that  
43 where the worker prevails in an appeal to court the Board no longer retains jurisdiction for the purpose  
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1 of fixing interest in an appeal, unless specifically directed to do so by order or judgment of the court.  
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3 Nothing in RCW 51.52.135 seems to authorize the Department itself to fix interest.

4 We believe that the responsibility for fixing interest in this case lies with the Superior Court, and  
5 not with the Department or the Board. Were we to grant the appeal from the Department orders  
6 paying interest we would be suggesting that we have the authority to fix interest in this case. Yet per  
7 RCW 51.52.135(3), that authority is vested solely in the court.  
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10 Therefore, since the appeal from the orders of the Department paying interest raises no issues  
11 over which the Board has jurisdiction, the appeal assigned Docket No. 89 0845 must be, and hereby  
12 is, denied. The denial of this appeal is without prejudice to the right of the claimant to request the  
13 Superior Court to either fix interest in this case, or to specifically direct the Board to do so.  
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16 It is so ORDERED.

17 Dated this 13<sup>th</sup> day of April, 1989.  
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19 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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21  
22 /s/  
23 SARA T. HARMON CHAIRPERSON  
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26 /s/  
27 FRANK E. FENNERTY, JR. MEMBER  
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30 /s/  
31 PHILLIP T. BORK MEMBER  
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