



**BLBA BULLETIN NO. 15-01**

Issue Date: January 16, 2015

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Expiration Date: When incorporated in the BLBA-PM

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**Subject: Calculating Interest on RO Attorney Fees**

**Background:** The Policy Steering Committee was asked to clarify the procedures for assessment of interest on approved attorney fees payable by responsible operators. Interest is assessed if the underlying benefits award is final and if the operator did not timely pay the approved fee. This bulletin describes the pertinent procedures for assessing interest in such cases. They should be followed to ensure consistency in attorney fee processing throughout the Division.

The authority for the assessment of interest on unpaid attorney fees is found at 20 CFR 725.608(c), which states:

*“In any case in which an operator is liable for the payment of an attorney’s fee pursuant to §725.367, and the attorney’s fee is payable because the award of benefits has become final, the attorney shall also be entitled to simple annual interest, computed from the date on which the attorney’s fee was awarded. The interest shall be computed through the date on which the operator paid the attorney’s fee.”*

Under this regulation, an attorney awarded fees by a District Director, an Administrative Law Judge, the Benefits Review Board, and/or a Court of Appeals is entitled to interest on the fee if (1) the responsible operator failed to pay the fee promptly after it was approved; and (2) the claimant’s award is final. Interest is payable from the date the fee was originally awarded through the date on which the fee is ultimately paid. This provision applies only to fees payable by responsible operators.

**Purpose and Scope:** This bulletin sets forth the procedures for calculating interest due pursuant to 20 CFR 725.608(c) and for issuing a supplemental order notifying the parties of the award of interest.

**Applicability:** Appropriate DCMWC personnel

**References:** 20 CFR 725.608(c)

**Action:** Interest assessed under 20 CFR 725.608(c) must be calculated by District Office staff promptly after a decision awarding benefits becomes final. Pursuant to 20 CFR 725.608(c), the accurate calculation of interest requires identification of two key dates: “*the date on which the attorney’s fee was awarded*” and “*the date on which the operator paid the attorney’s fee.*” Interest is awardable only for the period of time between these two dates.

After identifying the two key dates, the claims examiner must calculate the interest due using the Division’s PAYC automated system. Once that is accomplished, the claims examiner must issue a “Supplemental Award-Interest for Legal Services” (Attachment 1 - *available in CORS ASAP*) to the employer/carrier with service on the claimant’s attorney. This document will serve to notify all parties of the amount of interest due.

Pages 3-6 of this bulletin contain an illustration of how to perform the necessary interest calculations in PAYC. For simplicity, the sample utilizes an attorney fee award by a District Director. But interest may also be payable on attorney fees awarded by an Administrative Law Judge, the Benefits Review Board, or a Court of Appeals, if the claimant’s award is final and the fees were not promptly paid after the fee award. In such cases, the method of calculating interest will be identical, although the pertinent dates will most likely be different.

The sample calculation is based on the following facts:

- ❖ An attorney fee was awarded in the amount of **\$9,110.00** by the District Director on **March 2, 2012**.
- ❖ The District Director’s January 2, 2012 Proposed Decision and Order awarding benefits was upheld by an Administrative Law Judge on April 4, 2014 and that decision is now final.
- ❖ The liable responsible operator paid the attorney fee on **May 25, 2014**.
- ❖ Therefore, interest would be payable on the approved attorney fee for the period from March 2012, the month the fee was awarded, through May 2014, the month in which it was paid, which amounts to **\$592.28**.
- ❖ For purposes of calculating interest on unpaid attorney fees, the dates of any orders awarding the claim are not relevant (unless the order also awards fees). Interest on attorney fees is calculated from the date the fee was awarded.

The step-by-step method of calculation in the Division’s PAYC program follows:

## PAYC Interest Computation Method

### Step One:

Access the **PAYC** screen and in the **Type of Calculation** area, click on the **Interest** button.

In the **Determination Date** field enter 03/2012, the month and year the attorney fee was awarded by the District Director.

In the **Reimbursement Date** field enter 05/2014, the month and year that the liable responsible operator paid the attorney fee.

Click **OK**.

The screenshot shows the CAPS-BLPROD-PIBDC - [PAYC] application window. The menu bar includes Claim, Benefits, Rates, Miscellaneous, Subsystem, Preferences, Window, Help, and Exit. The 'PAYC' window is active, showing an 'Actions' bar with 'New Calculation', 'Help', 'Print', and 'Close' buttons. The 'Type of Calculation' dialog box is open, with the 'Interest' radio button selected. The 'Required Parameters' section shows 'Determination Date' as 03/2012 and 'Reimbursement Date' as 05/2014. The 'Optional Parameters' section includes fields for 'Miner SSN', 'Part Type', 'Chief Type', and 'Split Type'. At the bottom, the 'Clear' button is crossed out, and the 'OK' button is highlighted. Red arrows point to the 'Interest' radio button, the 'Determination Date' field, the 'Reimbursement Date' field, and the 'OK' button.

**Step Two:**

Enter the **Input Parameters** field.

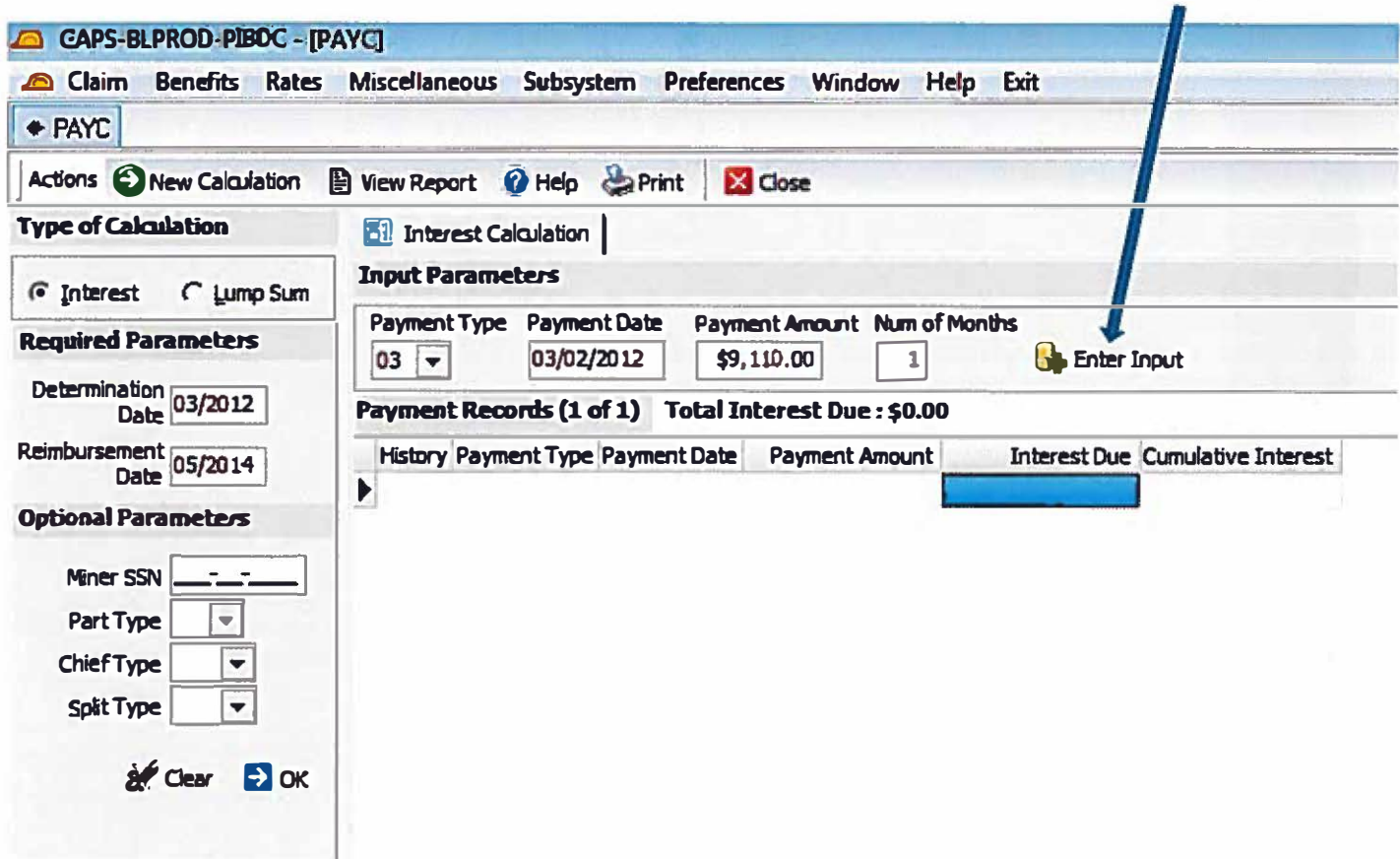
In the **Payment Type** field, select 03 from the drop down list for supplemental payment.

In the **Payment Date** field, enter 03/02/2012, the date the attorney fee was awarded by the District Director.

In the **Payment Amount** field, enter \$9,110.00, the amount of the attorney fee award.

In the **Number of Months** field, the default setting will remain as 1.

Once all fields in the **Input Parameters** section have been entered, click on the **Enter Input** button.



### Step Three:

The system will then calculate the amount of interest assessed from the date of the attorney fee award through the date of payment by the employer/carrier.

Click on the **View Report** button on the **Actions** toolbar to convert the calculation to a final document.

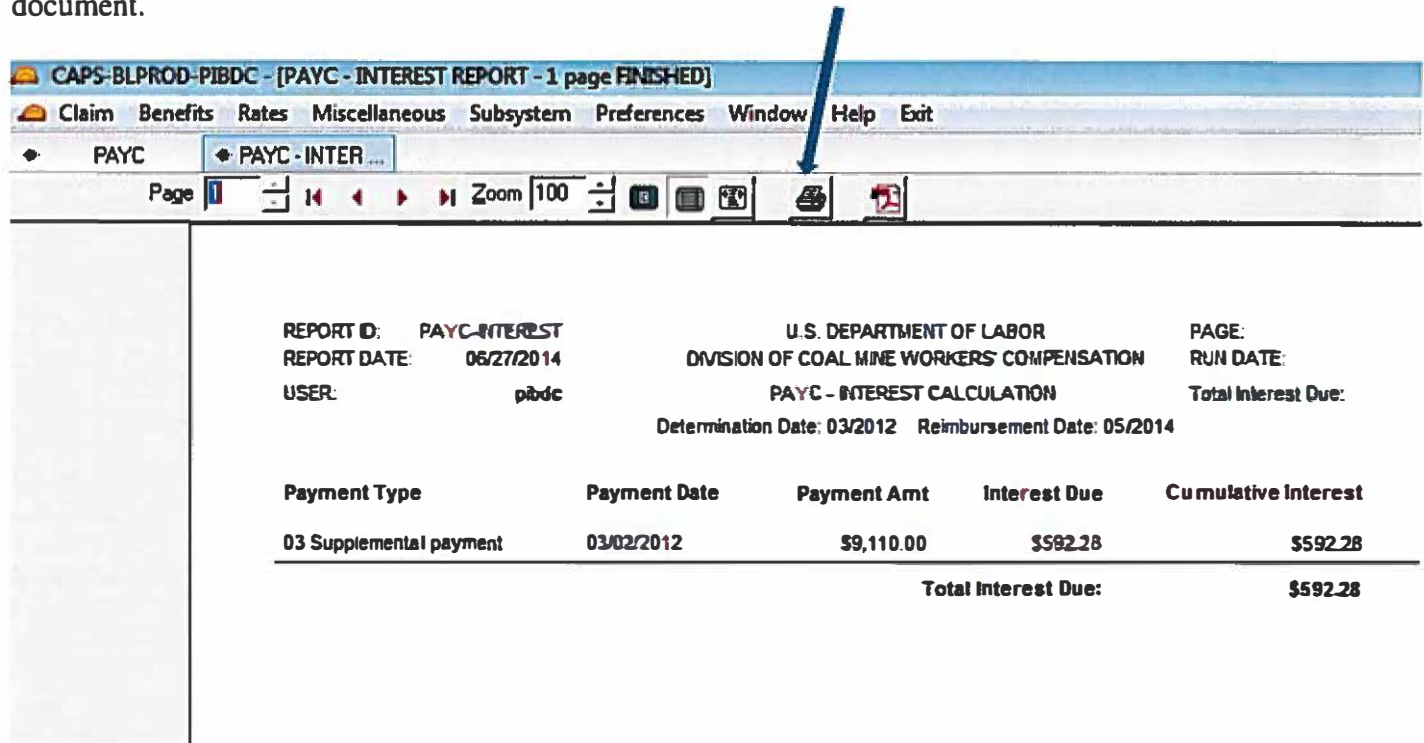
The screenshot displays the 'CAPS-BLPROD-PIBDC - [PAYG]' application window. The menu bar includes 'Claim', 'Benefits', 'Rates', 'Miscellaneous', 'Subsystem', 'Preferences', 'Window', 'Help', and 'Exit'. The 'PAYC' menu is open, showing 'Actions', 'New Calculation', 'View Report', 'Help', 'Print', and 'Close'. The 'View Report' button is highlighted with a blue arrow. The main window is titled 'Interest Calculation' and contains several sections:

- Type of Calculation:** 'Interest' is selected, with 'Lump Sum' as an alternative.
- Required Parameters:** 'Determination Date' is 03/2012 and 'Reimbursement Date' is 05/2014.
- Optional Parameters:** Fields for 'Miner SSN', 'Part Type', 'Chief Type', and 'Split Type' are present, along with 'Clear' and 'OK' buttons.
- Input Parameters:** 'Payment Type' is a dropdown, 'Payment Date' is a date field, 'Payment Amount' is \$0.00, and 'Num of Months' is 1. An 'Enter Input' button is also visible.
- Payment Records (1 of 1):** A table showing one record with a payment amount of \$9,110.00 and interest due of \$592.28. The total interest due is \$592.28.

History	Payment Type	Payment Date	Payment Amount	Interest Due	Cumulative Interest
▶	03	03/02/2012	\$9,110.00	\$592.28	\$592.28

**Step Four:**

Once the final calculation sheet is converted, this document may be printed and mailed to the employer/carrier as an enclosure to the Supplemental Award which specifies the amount of interest payable for the awarded attorney fee. Click on the **Print** icon on the toolbar to print the document.



The above-described document should be included as an enclosure to the Supplemental Award of Interest for Legal Services. A sample Supplemental Award of Interest for Legal Services is Attachment 1 to this bulletin.

**Disposition:** Retain until the instructions have been incorporated into the Coal Mine (BLBA) Procedure Manual.

MICHAEL A. CHANCE  
Director, Division of Coal  
Mine Workers' Compensation

**Attachment 1**

Distribution:  
All DCMWC Staff

In the matter of the claim for benefits under the Black Lung Act

**SUPPLEMENTAL AWARD  
INTEREST FOR LEGAL SERVICES**

CLAIM NO.: XXX-XX-XXXX LM C  
CASE ID: XXXXX-XXXXXXXX

MINER:

Claimant

Responsible Operator

1. The (DD, ALJ, BRB, COA) issued an attorney fee award on (date) awarding (Attorney name) a fee in the amount of (\$XXX.XX) and costs of (\$XXX.XX).
2. That based on information received from the claimant's attorney, the responsible operator paid the awarded attorney fee on (insert date).
3. The claimant's attorney is due interest on the Awarded Fee in accordance with 20 CFR 725.608(c) which states as follows:  
  
"In any case in which an operator is liable for the payment of an attorney's fee pursuant to §725.367, and the attorney's fee is payable because the award of benefits has become final, the attorney shall also be entitled to simple annual interest, computed from the date on which the attorney's fee was awarded. The interest shall be computed through the date on which the operator paid the attorney's fee."  
  
4. The operator is requested to pay directly to the claimant's attorney, (insert name), the sum of (\$XXX.XX). This amount represents interest which has accrued to the attorney.

Our Request for payment is based on information maintained in the office as of the date of this notice.

\_\_\_\_\_  
(Name of District Director)  
District Director

\_\_\_\_\_  
Date

Enclosures: Interest Calculation

**PROOF OF SERVICE**

**MINER:**

**CLAIM NO.: XXX-XX-XXXX LM C**

**CASE ID: XXXXX-XXXXXXX**

**CERTIFICATION**

I hereby certify that on XXXXXXXX XX, XXXX, the Supplemental Award of District Director, XXXX, was filed in the office of the District Director and a copy mailed to the parties and their representatives at the addresses listed below.

\_\_\_\_\_  
(name of District Director)  
District Director

**REGULAR MAIL**