

KENNETH D. NELSON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
STEVEDORING SERVICES OF)	DATE ISSUED:
AMERICA)	
)	
and)	
)	
MANHATTAN RE-INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS,)	
UNITED STATES DEPARTMENT OF)	
LABOR)	
)	
Respondent)	DECISION and ORDER
)	<i>EN BANC</i>

Appeal of the Compensation Order - Denial of Assessment of 20 Percent Penalty Under Section 14(f) on Interest of Karen P. Goodwin, District Director, United States Department of Labor.

Charles Robinowitz, Portland, Oregon, for claimant.

John Dudrey (Williams, Fredrickson & Stark, P.C.), Portland, Oregon for employer/carrier.

Samuel J. Oshinsky, Counsel for Longshore (Thomas S. Williamson, Jr., Solicitor of Labor; Carol DeDeo, Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, SMITH, BROWN, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Compensation Order - Denial of Assessment of 20 Percent Penalty Under Section 14(f) on Interest (Case No. 14-79399) of District Director Karen P. Goodwin rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The district director's determinations will be affirmed unless shown to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *Sans v. Todd Shipyards Corp.*, 19 BRBS 24 (1986); 33 U.S.C. §921(b)(3).

This appeal arises from a claim for benefits for injuries sustained by claimant on August 9, 1983, and July 7, 1984.¹ In a 1988 Decision and Order, the administrative law judge awarded claimant compensation for temporary and permanent disability resulting from his injuries, as well as medical benefits, interest and an attorney's fee. Employer paid the compensation awarded by the administrative law judge within 10 days of the filing of the Decision and Order but did not pay the interest awarded. Claimant accordingly requested that employer be held liable for a 20 percent penalty on the overdue interest pursuant to Section 14(f) of the Act, 33 U.S.C. §914(f). In a Compensation Order dated July 10, 1989, the district director² denied claimant's request for a Section 14(f) penalty. The district director reasoned that this provision provides a penalty only for untimely paid "compensation" due under an award and does not apply to other amounts payable, such as medical benefits, interest or an attorney's fee.

On appeal, claimant contends that the district director erred in denying a Section 14(f) penalty on the overdue interest, arguing that interest fits within the definition of "compensation" as it is money payable to claimant pursuant to the Act, the parties can easily calculate the amount from the administrative law judge's award, and no further findings are necessary to calculate claimant's benefits. Claimant notes that the Board and the courts have recognized that the purpose of interest is to compensate claimant for the lack of use of his benefits at an earlier date and to make him whole. Claimant therefore urges the Board to hold that interest is "compensation" for purposes of Section 14(f) in order to facilitate the public policy interest of ensuring the prompt payment of benefits. Claimant acknowledges that in *Castronova v. General Dynamics Corp.*, 20 BRBS 139 (1987), the Board held that interest is not "compensation" for purposes of an offset under Section 14(j), 33 U.S.C. §914(j), but asserts that *Castronova* is distinguishable from the present case.

Employer responds that interest is not "compensation" under the Act, and that Section 14(f),

¹This case was originally consolidated with *Haluapo v. Jones Oregon Stevedoring Co.*, BRB No. 89-2431. By Order dated March 12, 1992, the Board severed the cases and remanded *Haluapo* to the district director for approval of a proposed settlement. Subsequently, by Order dated April 19, 1994, this case was consolidated with BRB Nos. 88-3695, 93-1407/A, 93-2149, 94-0454, and 94-2279, appeals of decisions involving the same claimant. In a Decision and Order on these appeals dated June 28, 1995, the Board severed the present appeal and has decided to review it *en banc*.

²The title "district director" has been substituted for the title "deputy commissioner" used in the statute. 20 C.F.R. §702.105.

a penalty provision, must be strictly construed. Employer thus urges affirmance of the district director's denial of a Section 14(f) penalty. Citing *Castronova*, 20 BRBS at 139, in which the Board held that interest is not "compensation" for purposes of Section 14(j), employer argues that no valid reason exists for interpreting interest differently under Section 14(f). The Director, Office of Workers' Compensation Programs (the Director), also responds, asserting that this issue was previously addressed in *Sproull v. Stevedoring Services of America*, 25 BRBS 100 (1991)(Brown, J., dissenting), *modified on other grounds on recon. en banc*, 28 BRBS 271 (1994), and that pursuant to that decision, the Board should summarily vacate the district director's determination, and remand the case for imposition of the Section 14(f) penalty. Employer replies that while the Board did reverse the district director's denial of a Section 14(f) penalty on facts identical to those in the present case in *Sproull*, that decision is inconsistent with the plain language of the statute and accordingly should be overruled.

As the Director asserts, the issue of whether interest is "compensation" for purposes of Section 14(f) was previously addressed by the Board in *Sproull*, 25 BRBS at 100. In *Sproull*, the majority stated that the purpose of an award of interest is to ensure that claimant is fully compensated for his disability and the Section 14(f) penalty was intended by Congress to encourage prompt payment of benefits. The majority concluded that interest is "compensation" for purposes of Section 14(f), as this holding will ensure that all benefits intended to make claimant whole will be promptly paid by employer. *Id.* at 112. In dissent, Administrative Appeals Judge Brown stated that he would hold that interest is not compensation for purposes of Section 14(f), noting that interest is not explicitly provided for by the Act, and that as the Board had held that interest is not "compensation" for the purposes of Section 14(j) in *Castronova*, the subsections of Section 14 should be interpreted consistently. *Id.* at 113-114.

Upon further reflection, we conclude that the reasoning of Judge Brown's dissent in *Sproull* is compelling. We thus agree with employer that the majority's holding in *Sproull* must be overruled. Section 14(f) of the Act provides that if any *compensation* payable under an award is not paid within 10 days, there shall be added to the unpaid *compensation*, an amount equal to 20 percent thereof. Section 2(12) of the Act, 33 U.S.C. §902(12), defines "compensation" as "the money allowance payable to an employee or his dependents as provided for in this Act. . . ." See 33 U.S.C. §§908, 909. Unlike compensation provided by the statute, awards of interest are not provided by the Act itself, but have been granted by the courts to ensure that claimants are fully compensated for their work-related injuries. *Foundation Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71 (CRT)(9th Cir. 1991); *Cox v. Army Times Publishing Co.*, 19 BRBS 195 (1987). As interest is not awarded under a provision of the Act, it cannot be considered "compensation" as defined under Section 2(12). Since a Section 14(f) penalty is due only on "compensation," we agree with employer that the failure to timely pay interest cannot properly serve as a basis for imposing a penalty under Section 14(f).

The holding to the contrary in *Sproull* was premised on promoting the policy concern of ensuring the prompt payment of "benefits." The plain language of Section 14(f), however refers only to the payment of "compensation." Where, as here, a statute speaks with clarity on an issue,

judicial inquiry into the meaning of the statute in all but the most extraordinary cases is precluded. *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 26 BRBS 49 (CRT) (1992). Policy concerns cannot overcome the plain language of the Act, and the plain language of the statute clearly applies the penalty only to compensation. Thus, the majority's interpretation in *Sproull*, 25 BRBS at 112-113, is fatally flawed.

The holding that interest is not "compensation" is also consistent with Board cases construing that term in other contexts. It is a basic canon of statutory construction that identical terms within the Act bear the same meaning. *See Cowart*, 505 U.S. at 475, 26 BRBS at 52 (CRT). Construing the term "compensation" in accordance with the definition of Section 2(12), the Board has held that medical benefits are not "compensation" for purposes of Section 14(f). *Caudill v. Sea Tac Alaska Shipbuilding*, 22 BRBS 10 (1988), *aff'd mem. sub nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, 8 F.3d 29 (9th Cir. 1993). *Accord Harris v. Todd Pacific Shipyards Corp.*, 28 BRBS 254 (1994)(medical benefits are not "compensation" for purposes of Section 33(g) of the Act). Similarly, the Board has held that a Section 14(f) assessment cannot be required on the late payment of attorney's fees, since attorney's fees are not compensation payable to an employee. *Wells v. International Great Lakes Shipping Co.*, 14 BRBS 868 (1982). In addition, as previously discussed, the Board held in *Castronova*, 20 BRBS at 141, that since interest is not explicitly provided for by the Act and awards of interest serve a different purpose than awards of benefits, interest is not compensation and accordingly cannot be used to offset compensation payments owed pursuant to Section 14(j). By our holding today we will not only be interpreting the subsections of Section 14 consistently with each other, but also with other provisions of the Act interpreting the term "compensation."

To summarize, we hold that as interest is not "compensation" provided under the Act, employer's failure to timely pay interest cannot properly serve as a basis for imposing a penalty under Section 14(f). The Board's prior holding to the contrary in *Sproull*, 25 BRBS at 112-113, is overruled because it is inconsistent with the plain language of the statute and with other case precedent construing the term "compensation." The district director's denial of a Section 14(f) assessment on the overdue interest in this case is therefore affirmed.

Accordingly, the Compensation Order - Denial of Assessment of 20 Percent Penalty Under Section 14(f) on Interest of the district director is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge