

FRANCIS MINERVINI)	
)	
Claimant-Petitioner)	
)	
v.)	
)	DATE ISSUED:_____
UNIVERSAL MARITIME SERVICE)	
CORPORATION)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Julius A. Johnson, Administrative Law Judge, United States Department of Labor.

Philip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

Celestino Tesoriero (Grainger & Tesoriero), New York, New York, for employer.

Before: SMITH, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (90-LHC-1173) of Administrative Law Judge Julius A. Johnson awarding benefits 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). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with applicable law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant was injured on April 28, 1989, and employer voluntarily paid temporary total disability benefits from April 30, 1989 through July 10, 1989. Thereafter, the parties disputed continuing disability and permanency. After the hearing on December 12, 1990, employer agreed to pay permanent total disability benefits at the rate of \$300 per week from July 11, 1989, pending issuance of a formal order.

The administrative law judge awarded claimant permanent total disability benefits and ordered employer to pay benefits at a rate of \$609.46 from August 20, 1989. He also awarded employer Section 8(f), 33 U.S.C. §908(f), relief. Decision and Order at 4. On July 1, 1991, employer paid the difference between the award and the compensation it had paid previously. On

July 22, 1991, claimant filed a "Request for Clarification," addressing his entitlement to interest on benefits which were paid late. The administrative law judge took no action on this request. Claimant appeals the administrative law judge's Decision and Order, and employer responds, urging affirmance.

Claimant contends the administrative law judge erred in not awarding interest on past-due benefits. Claimant's contention has merit. Although interest is not specifically addressed in the Act, the United States Courts of Appeals have accepted the opinion of the Director, Office of Workers' Compensation Programs, that interest on past-due compensation serves the purposes of the Act and permits claimant to be compensated fully. *Foundation Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71 (CRT) (9th Cir. 1991); *Quave v. Progress Marine*, 912 F.2d 798, 24 BRBS 43 (CRT) (5th Cir. 1990), *cert. denied*, ___ U.S. ___, 111 S.Ct. 2012 (1991); *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP*, 594 F.2d 986, 9 BRBS 1089 (4th Cir. 1979). Moreover, the Board has noted previously that the award of interest is mandatory, and that the issue of whether claimant is entitled to interest can be raised at any time. *Canty v. S.E.L. Maduro*, 26 BRBS 147 (1992); *Jones v. U.S. Steel Corp.*, 25 BRBS 355, 359 (1992); *Grant v. Portland Stevedoring Co.*, 16 BRBS 267 (1984), *on recon.*, 17 BRBS 20 (1985). Consequently, the administrative law judge erred in failing to award claimant interest on past-due payments of compensation.

Additionally, we reject employer's argument that claimant waived his right to interest by agreeing to accept \$300 per week as compensation. We first note that interest cannot be waived in contested cases. *Byrum v. Newport News Shipbuilding & Dry Dock Co.*, 14 BRBS 833 (1982). Further, although employer cites *Hernandez v. Sealand Service, Inc.*, 9 BRBS 1076 (1978), and *Clefstad v. Perini North River Associates*, 9 BRBS 217 (1978), for the principle that interest may be waived by agreement, these cases indicate that interest may be waived by the parties only under an approved Section 8(i), 33 U.S.C. §908(i), settlement. In this case, claimant accepted and employer paid \$300 per week as compensation. This agreement represents a compromise pending the issuance of a formal order by the administrative law judge. As there was no Section 8(i) settlement between the parties, *Hernandez* and *Clefstad* do not apply. Claimant is therefore entitled to interest on past-due benefits, to be assessed at the applicable rate under 28 U.S.C. §1961, in accordance with the Board's decisions in *Grant*, 16 BRBS at 267 and 17 BRBS at 20.

Accordingly, the Decision and Order of the administrative law judge is modified to reflect claimant's entitlement to interest on all compensation which was not paid in a timely manner.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge