

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

JOHN F. CATTERALL, AS )  
EXECUTOR OF THE ESTATE OF )  
BRIAN F. CATTERALL )

VS. )

W.C.C. 2008-02354

CARDI CORPORATION )

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the employer's appeal from the decision and decree of the trial judge on a petition to calculate the proper payment of interest on retroactive workers' compensation benefits. After conducting a careful review of the record and considering the arguments of both parties, we find that the trial judge's calculation of interest was in error and grant the employer's appeal.

As the legal issue brought before the trial judge, and now the Appellate Panel, is narrow in scope, the parties entered into a stipulation of facts which we will summarize for purposes of our decision. The employee suffered a work-related injury to his right shoulder on October 20, 2001. A pretrial order entered in W.C.C. No. 2003-03692 awarded benefits for partial incapacity from October 21, 2001 to December 16, 2001. The employee claimed a trial, after which the trial judge issued a decree awarding periods of partial incapacity from October 21, 2001 through January 31, 2002, and from March 22, 2004 through May 20, 2004. Additionally, the employee was found to have been totally incapacitated from May 21, 2004 until November 17, 2004, at

which time his incapacity ended. The employer's workers' compensation insurance carrier, Beacon Mutual Insurance Company (Beacon), paid the benefits for these periods in a timely manner. The employee claimed an appeal from the trial decision, and the Appellate Division issued an Amended Decision and a Final Decree which was entered on January 17, 2007. The appellate panel affirmed the periods of disability found by the trial judge, but also determined that the employee remained partially disabled as of November 17, 2004 and continuing, and awarded the retroactive payment of benefits accordingly. We also ordered that interest be paid on the retroactive payments pursuant to R.I.G.L. §§ 28-35-12(c) and 9-21-10.

On January 29, 2007, Beacon issued payment to the employee for the retroactive weekly benefits due from November 17, 2004 to January 29, 2007. Beacon also commenced the payment of weekly benefits for partial incapacity beginning on January 29, 2007, which were paid until February 5, 2007, when the employee sadly passed away from a non-work-related cause. In addition to the retroactive payments paid on January 29, 2007, Beacon also paid interest at the statutory rate of twelve percent (12%) per annum. Beacon applied this interest rate to the amount of compensation due each month during the period of November 18, 2004 to January 16, 2007. The total interest payment was Eight Thousand Five Hundred Twenty-seven and 83/100 (\$8,527.83) Dollars.

On April 7, 2008, the executor of the employee's estate, John F. Catterall, filed a petition to review alleging that Beacon had failed to pay the proper amount of interest on the retroactive benefits.<sup>1</sup> At the pretrial conference, the trial judge agreed with the employee's calculation and entered a pretrial order awarding interest of twenty-six percent (26%) on the entire amount of weekly benefits due from November 18, 2004 to January 17, 2007, a period of twenty-six (26) months. This calculation resulted in an interest payment of Sixteen Thousand Four Hundred

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<sup>1</sup> The term "employee" will refer to both the employee and the employee's estate.

Forty-five and 74/100 (\$16,445.74) Dollars, less credit for interest already paid. The employer claimed a trial.

Along with other relevant documents, the parties attached charts to the stipulation of facts showing how Beacon had calculated the interest on the monthly amount of benefits due, and also how interest would be calculated on the individual weekly compensation payments as they became due. The total interest due pursuant to the weekly calculation is Nine Thousand Three Hundred Forty-six and 59/100 (\$9,346.59) Dollars.

The trial judge subsequently affirmed his pretrial order and adopted the employee's proposed method for calculating the interest. In doing so, he relied on R.I.G.L. § 9-21-10, which avers that interest on retroactive payments shall be paid "at the rate of twelve percent (12%) per annum thereon from the date the cause of action accrued." The trial judge reasoned that the cause of action was the petition before the court, and thus the "interest [became] due all at once, not weekly." (Decision at 4.) Therefore, interest at the rate of twelve percent (12%) per annum, or approximately twenty-six percent (26%), was added to the lump sum of retroactive benefits. The employer promptly filed a claim of appeal.

The employer has filed eight (8) reasons of appeal which can be distilled into one (1) primary argument. The employer contends that the trial judge's calculation of interest is at odds with R.I.G.L. §§ 28-35-12(c) and 9-21-10. After carefully reviewing the statutory language, pertinent case law, and the arguments of the respective parties, we find that the trial judge's calculation of the interest owed on retroactive compensation benefits was in error. Accordingly, the employer's appeal is granted and we vacate the decision and decree of the trial judge.

Rhode Island law permits the award of interest on the retroactive payment of workers' compensation benefits under R.I.G.L. § 28-35-12(c), which states that

[i]f any determination of the workers' compensation court entitles an employee to retroactive payment of weekly benefits, the court shall award to the employee interest at the rate per annum provided in § 9-21-10 on that retroactive weekly payment from six (6) months subsequent to the date that the employee first filed a petition for benefits to the time when that retroactive payment is actually made.

Rhode Island General Laws § 9-21-10 sets the interest rate at “twelve percent (12%) per annum ... from the date the cause of action accrued.” After reading the statutes in concert, it is clear that § 28-35-12(c) only incorporates § 9-21-10 to the extent that it establishes the applicable interest rate. In fact, §28-35-12(c) sets the time at which interest begins to attach to retroactive workers' compensation payments, “six (6) months subsequent to the date that the employee first filed a petition for benefits ....”

With R.I.G.L. § 28-35-12(c) controlling, we must determine whether the interest rate is applied to each overdue weekly payment individually, or to all of the payments in one lump sum. It is undisputed that the employee is entitled to interest under the Act; however, this is our first occasion to determine the precise calculation of this award.

Our analysis must begin by recognizing that the award of interest “serves two purposes: it promotes early settlements, and more importantly, it compensates persons for the loss of use of money that was rightfully theirs.” Murphy v. United Steelworkers of America Local No. 5705, AFL-CIO, 507 A.2d 1342, 1346 (R.I. 1986). The proper method of calculation must, therefore, first compensate the employee for any monies to which he was rightfully entitled, and then promote early settlement. *See* Martin v. Lumberman's Mutual Casualty Co., 559 A.2d 1028, 1031 (R.I. 1989).

The Rhode Island courts have yet to apply these principles to R.I.G.L. § 28-35-12(c). However, before the Act appeared in its current iteration, the Rhode Island Supreme Court

expressed support for the method of calculation now advocated for by the employer. *See* Gomes v. John J. Orr & Son, 78 R.I. 96, 98, 79 A.2d 618, 619 (1951). In Gomes, the employee argued that in addition to retroactive benefit payments, he was entitled to interest “on each weekly payment of compensation from the time it became due to the time it was actually paid.” Id. The Court denied the employee’s request on the grounds that the Act “contain[ed] no provision expressly authorizing the allowance of interest on any compensation award,” and whether or not to “permit addition of interest ... from the date of each weekly payment found to be due, is a matter for legislative enactment and not for judicial construction of the law as it now stands.” Id. Nonetheless, the Court noted that “[f]rom the standpoint of logic and equity [the employee’s] argument is not without considerable force.” Id.

We are not bound by the same constraints as the Court was in deciding Gomes, because the Act in its current form provides for the award of interest on retroactive payments. Free of such constraints, such a method of calculating the interest award remains compelling from the “standpoint of logic and equity.” *See id.*

The Supreme Court’s reasoning in Barbato v. Paul Revere Life Ins. Co., 794 A.2d 470 (R.I. 2002), is also instructive on this issue. In Barbato, a plaintiff’s disability insurance payments were prematurely terminated and a jury ordered the insurer to pay six (6) years worth of retroactive payments. Pursuant to R.I.G.L. § 9-21-10, interest was applied on the payments due from the date of the breach to the date of judgment. The defendant then argued, unsuccessfully, that each successive payment should be discounted to their value at the time of breach. The Supreme Court refused to discount the damages because doing so was a matter of proof and the defendant failed to introduce evidence of the proper discounting.

However, the Court expressed concern that the “plaintiff has received a windfall of prejudgment interest because six years of prejudgment interest have been added to every monthly disability payment, even those that were not due and payable until one, two, or three months before this case went to trial.” Barbato, 794 A.2d at 472. It further explained that although the proper rate of interest

could have been achieved by applying the prejudgment interest rate (12 percent) to each monthly payment from the date when it was due but not paid, the better method in an anticipatory breach situation is to discount the payments to their value on the date the damages first began to accrue ... and then to apply the prejudgment interest rate to the total sum of the discounted monthly payments.

Id. at 473 (citation omitted).

Again, we find ourselves free of the constraints encountered by the Court in Barbato. The issue in the current case did not arise out of an anticipatory breach of contract, and we see no justification for requiring the parties in a workers’ compensation action to prove the discounted value of each overdue payment when a windfall can be avoided by merely applying the statutory rate individually to each of those same payments.

Given the Court’s reasoning in both Barbato and Gomes, we are of the opinion that the better method in a workers’ compensation action is to apply the statutory interest rate to each weekly payment as it became due. *See id.*; Gomes, 78 R.I. at 98, 79 A.2d at 619; *see also* Miller v. Dixon Indus. Corp., 513 A.2d 597, 602-03 (R.I. 1986) (holding interest on improperly withheld stock options begins to run on the date the option was first exercisable); Lippman v. Kay, 415 A.2d 738, 743 (R.I. 1980) (holding each unpaid installment of familial support becomes in the nature of a judgment as it accrues). This method ensures that the statutory award of interest “compensates persons for the loss of use of money that was rightfully theirs,” without

the aggrieved party receiving a windfall of financial recompense.<sup>2</sup> Murphy, 507 A.2d at 1346. Furthermore, the Act already penalizes delinquent payments under §§ 28-35-42 and 28-35-43; allowing additional punishment under § 28-35-12(c) would be in derogation of the Act's legislative intent. *See In re Advisory Opinion to the Governor*, 504 A.2d 456, 459 (R.I. 1986) (“[w]hen the language of a statute is unambiguous and expresses a clear and sensible meaning, there is no room for statutory construction or extension ....”).

In this case, an award of twenty-six percent (26%) interest on retroactive payments that were due twenty-six (26) months ago is appropriate; however, awarding the same amount of interest on those payments that were due only one (1) or two (2) *weeks* previous would result in a windfall to the employee and an excessive punishment of the employer. For these reasons, we grant the employer's appeal and find that the interest on the retroactive award of workers' compensation benefits shall be calculated on each weekly payment as it would have been due, and not on the lump sum of all retroactive payments.

After our thorough review of the record and careful consideration of the parties' arguments, the employer's appeal is granted and the decision and decree of the trial judge are hereby vacated. In accordance with our decision, a new decree shall enter containing the following findings and orders:

1. That pursuant to the final decree of the Appellate Division entered in W.C.C. No. 2003-03692 on January 17, 2007, the employer was ordered to pay interest on the retroactive

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<sup>2</sup> This calculation is favored in other jurisdictions as well. Despite a “lack of any unanimity or uniformity in the decisions on the subject of allowing interest on past due compensation benefits,” at least eighteen (18) states require an award of interest on past due benefits to be calculated from the date each payment became due. *See Christopher R. Brown, D.D.S., Inc. v. Decatur County Mem'l Hosp.*, 892 N.E.2d 642, 648 (Ind. 2008). These states include Alaska, Arkansas, Colorado, Florida, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, and Utah.

award of weekly benefits for the period of November 18, 2004 to January 17, 2007 for a work-related injury sustained by the employee on October 20, 2001.

2. That for the period of November 18, 2004 to January 17, 2007, the petitioner/employee is entitled to interest in the amount of twelve percent (12%) per annum as calculated on each individual retroactive payment of weekly benefits as it would become due.

It is, therefore, ordered:

1. That the employer's appeal is granted and the decision and decree of the trial judge are hereby vacated.

2. That for the period of November 18, 2004 to January 17, 2007, the employer shall pay to the employee interest at the rate of twelve percent (12%) per annum on each individual retroactive payment of weekly benefits from the date it was due until January 17, 2007.

3. That the total amount of interest due pursuant to this calculation is Nine Thousand Three Hundred Forty-six and 59/100 (\$9,346.59) Dollars.

4. That the employer is entitled to a credit for any interest payments made pursuant to the pretrial order entered in this matter on May 5, 2008 and the trial decree entered in this matter on November 21, 2008 against any amount of interest due pursuant to our decision and decree.

In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

Salem and Ferrieri, JJ., concur.



ENTER:

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Olsson, J.

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Salem, J.

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Ferrieri, J.

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W.C.C. 2008-02354

CARDI CORPORATION )

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the respondent/employer from a decree entered on November 21, 2008. Upon consideration thereof, the appeal of the respondent/employer is granted and in accordance with the Decision of the Appellate Division, the following findings of fact are made:

1. That pursuant to the final decree of the Appellate Division entered in W.C.C. No. 2003-03692 on January 17, 2007, the employer was ordered to pay interest on the retroactive award of weekly benefits for the period of November 18, 2004 to January 17, 2007 for a work-related injury sustained by the employee on October 20, 2001.

2. That for the period of November 18, 2004 to January 17, 2007, the petitioner/employee is entitled to interest in the amount of twelve percent (12%) per annum as calculated on each individual retroactive payment of weekly benefits as it would become due.

It is, therefore, ORDERED:

1. That the employer's appeal is granted and the decision and decree of the trial judge are hereby vacated.

2. That for the period of November 18, 2004 to January 17, 2007, the employer shall pay to the employee interest at the rate of twelve percent (12%) per annum on each individual retroactive payment of weekly benefits from the date it was due until January 17, 2007.

3. That the total amount of interest due pursuant to this calculation is Nine Thousand Three Hundred Forty-six and 59/100 (\$9,346.59) Dollars.

4. That the employer is entitled to a credit for any interest payments made pursuant to the pretrial order entered in this matter on May 5, 2008 and the trial decree entered in this matter on November 21, 2008 against any amount of interest due pursuant to our decision and decree.

Entered as the final decree of this Court this            day of

BY ORDER:

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John A. Sabatini, Administrator

ENTER:

\_\_\_\_\_  
Olsson, J.

\_\_\_\_\_  
Salem, J.

\_\_\_\_\_  
Ferrieri, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Berndt W. Anderson, Esq., and Gregory L. Boyer, Esq., on

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