

Chapter 21

Interest on Past Due Medical Bills (BMI) and Penalties

I. Generally

In cases where the miner is initially adjudicated as totally disabled due to pneumoconiosis, but the responsible operator either (1) contests the miner's entitlement to compensation and medical benefits, or (2) disputes whether certain medical treatment is related to the miner's black lung condition, then the Director, OWCP will make interim payments for the miner's medical bills from the Black Lung Disability Trust Fund.

Once the miner is finally adjudicated as being entitled to such medical services, Subsection 934(b)(1) of the Black Lung Benefits Act creates an obligation on the part of employers for repayment to the United States of all benefits and interest paid by the Trust Fund. 30 U.S.C. § 934(b)(1). Subsection 934(b)(1) further provides that failure to repay the obliged amount creates "a lien in favor of the United States for such amount" 30 U.S.C. § 934(b)(1).

II. Jurisdiction

Once a final determination is made that benefits are owed, the administrative law judge has discharged his or her responsibilities under the Act. Assessment and enforcement of the payment of interest or penalties, which includes a legal determination of the date on which interest accrues, properly lies with the appropriate federal district court.

The amended regulations at 20 C.F.R. § 725.530 (2008) provide that "[a]n operator that fails to pay any benefits that are due, with interest, shall be considered in default with respect to those benefits, and the provisions of § 725.605 of this part shall be applicable. In addition, a claimant who does not receive any benefits within 10 days of the date they become due is entitled to additional compensation equal to twenty percent of those benefits (see § 725.607)." 20 C.F.R. § 725.530(a) (2008).

A. Benefits Review Board

In *Wade v. Island Creek Coal Co.*, BRB No. 93-549 BLA (Feb. 22, 1996) (unpub.), the Board held that neither it nor the administrative law judge has jurisdiction over issues involving the computation of interest assessed against the employer for reimbursements owed to the Trust Fund. See also *Brown v. Sea "B" Mining Co.*, 17 B.L.R. 1-115 (1993)(en banc); *Balaban v. Duquesne Light Co.*, 16 B.L.R. 1-120 (1992).

Citing the Sixth Circuit's holding in *The Youghioghenny and Ohio Coal Co. v. Vahalik*, 970 F.2d 161 (6th Cir. 1992), the Board, in *Brown*, concluded that "[o]nce final eligibility and liability determinations are made, . . . the benefit of agency expertise becomes irrelevant, and jurisdiction is vested in the federal district court for the enforcement of the agency orders."

B. Third Circuit

The Third Circuit, in *Bethenergy Mines v. Director, OWCP*, 32 F.3d 843 (3rd Cir. 1994), followed the Sixth Circuit's lead in *Vahalik v. Youghioghenny & Ohio Coal Co.*, 970 F.2d 161 (6th Cir. 1992) to hold that neither the administrative law judge nor Benefits Review Board has jurisdiction to decide interest assessment issues.

C. Sixth Circuit

In *Youghioghenny*, the Sixth Circuit concluded that, pursuant to Subsection 932(a) of the Act, neither the Office of Administrative Law Judges nor the Benefits Review Board has subject-matter jurisdiction over enforcement actions for interest payments owed to the Trust Fund. In a related case, the Board in *Bertinotti v. Mathias Coal Co.*, 16 B.L.R. 1-16 (1991) concluded that a penalty assessment under Section 14(f) lay with the appropriate federal district court where there are no unresolved questions of fact. *See also Ayers v. Peabody Coal Co.*, 17 B.L.R. 1-124 (1993)(en banc order).