

JUDGES' BENCHBOOK OF THE BLACK LUNG BENEFITS ACT



PREPARED BY THE U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
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CHAPTER 21 Interest on Past Due Medical Bills (BMI) and Penalties

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I. Generally [III(C)(1)]

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

Once the miner is finally adjudicated as being entitled to such medical services, § 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, *plus interest*, paid by the Trust Fund. 30 U.S.C. § 934(b)(1). Section 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

In *Wade v. Island Creek Coal Co.*, BRB No. 93-549 BLA (Feb. 22, 1996)¹, 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 for medical benefits paid by the 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 Youghiogheny 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.”

In *Youghiogheny*, the Sixth Circuit concluded that, pursuant to § 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 § 14(f) lay within the jurisdiction of the 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).²

¹ It is noted that this decision was marked “Published.” However, it has not been reported in the *Black Lung Reporter* service.

² The amended regulations at § 725.530 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

Likewise, the Third Circuit, in *Bethenergy Mines v. Director, OWCP*, 32 F.3d 843 (3d Cir. 1994), followed the Sixth Circuit's lead in *Vahalik v. Youghioghney & 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.

From these cases, it is reasonable to conclude that, once a final determination is made that medical benefits are owed, then this Office has discharged its administrative duty. Assessment and enforcement of the payment of interest or penalties, which includes the legal determination of the date on which interest accrues, properly lies with the appropriate federal district court.

due is entitled to additional compensation equal to twenty percent of those benefits (see § 725.607).” 20 C.F.R. § 725.530(a) (Dec. 20, 2000).