

Operational  
Policy

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Section  
Employer Accounts

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Subject  
**Credit Interest on Appeals**

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## Law

### s.159(2)(a)

The Board has the power to establish policies concerning the premiums payable by employers under the insurance plan.

## Policy

The WSIB pays credit interest on successful appeals provided the employer had previously paid the disputed premium amount in full.

## Guidelines

### Definitions

"appeal" for the purpose of this policy means a reconsideration of a decision-maker's decision following an employer's objection, an appeal to the Appeals Branch or to the Workplace Safety and Insurance Appeals Tribunal (WSIAT).

"disputed premium" for the purpose of this policy refers to an employers' appeal of a premium issue and includes

- a reclassification
- status determinations regarding worker, independent operator, executive officer
- adjustment of earnings
- debit interest and charges
- experience rating surcharge/rebate adjustments
- Workwell surcharges

### NOTE

The disputed premium could be either for an amount due for a past period, or a premium amount that becomes due while the issue is under appeal.

"credit interest" for the purpose of this policy is the Bank of Canada rate. This interest rate is set quarterly.

## Case Examples

Credit interest is paid in appeal situations such as those illustrated in the following case examples.

### Example 1 - letter of credit posted

On April 3, 2008, the WSIB reclassifies an employer to a higher rate group classification effective January 1, 2008. The employer objects to the reclassification on June 15, 2008, and posts a letter of credit with the WSIB for the past (additional) premium amount owing due to the reclassification. See OPM 14-04-05, Alternative Payment Arrangements. The employer continues to pay its ongoing

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premiums from June 15, 2008 throughout the entire reconsideration and appeal process. The original decision-maker confirms its reclassification decision and refers the objection to the Appeals Branch, which rules in favour of the employer (i.e., overturns the original decision-makers reclassification decision) in its decision on December 17, 2008. Credit interest is calculated from the time the employer paid its premium owing (June 15, 2008) to the date the Appeals Branch December 17, 2008 decision is processed.

**Note**

If appeal above proceeded to WSIAT and WSIAT ruled in the employer's favour, the credit interest calculation would extend to the date the WSIAT's decision is processed.

**Example 2 - premium payment in full**

Using a different payment approach to the situation described in Example 1, an employer may pay the full amount of the past (additional) premium amount on May 15, 2008, as well as its ongoing premiums throughout the appeal process. By choosing this payment in full approach, credit interest is calculated from May 15, 2008 to the date the Appeals Branch December 17, 2008 decision is processed.

**Example 3 - account adjustment**

An employer is audited on December 9, 2008 for the years 2006 and 2007. The auditor determines that a number of contractors engaged by the employer are workers whose earnings the employer did not include in its calculation of WSIB premiums. The auditor adds these contractor's earnings to the employer's account, which result in an additional premium amount owing by the employer. On February 12, 2009, the employer objects to the additional premium notice since the employer considers those contractors to be independent operators. The appeal passes through and is confirmed at the reconsideration stage and by the Appeals Branch. The employer decides to take the issue further to WSIAT. On November 23, 2009, WSIAT rules in favour of the employer in that the contractors are considered independent operators (not workers) and that the additional premium based on their earnings be reversed.

If the employer posts a letter of credit for the additional premium for 2006 and 2007, and continues to pay its ongoing premiums from February 12, 2009 until WSIAT's November 23, 2009 decision, credit interest is calculated from February 12, 2009 to the date WSIAT's November 23, 2009 decision is processed (the period the employer continued to pay its ongoing premiums).

If the employer paid the additional premium for 2006 and 2007 in full on January 15, 2009, and continued to pay its ongoing premiums until WSIAT's November 23, 2009 decision, credit interest is calculated from January 15, 2009 to the date WSIAT's November 23, 2009 decision is processed.

**Example 4 - experience rating**

On November 7, 2007, an employer receives a NEER bulk issue comprised of a surcharge for each of 2004, 2005, and 2006 injury years. In March 2008, a 2004 injury was granted SIEF relief. In April 2008, the employer requests that the 2004 injury year be adjusted to reflect the SIEF relief. Based on experience rating policy, the request to adjust is denied. The employer objects to the experience rating decision. The objection is referred to the Appeals Branch, which rules in favour of the employer.

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**Scenario 1 - surcharge paid in full**

The employer has paid the entire NEER surcharge in full, by the due date, December 31, 2007.

If the appeal decision results in a reduced surcharge for 2004, credit interest is calculated based on the reduced amount from December 31, 2007 (the due date) to the date the adjustment is processed.

If the appeal results in a net credit for 2004, credit interest is calculated based on the adjusted value (surcharge plus net credit), from November 7, 2007 (the bulk issue date) to the date the adjustment is processed.

**Scenario 2 - letter of credit posted**

The employer posts a letter of credit for the 2004 NEER surcharge amount.

If the appeal decision results in a reduced surcharge for 2004, neither debit or credit interest is calculated.

If the appeal decision results in a net credit for 2004 over and above the amount covered by the letter of credit, credit interest is calculated, based only on the net credit amount, from November 7, 2007 (the bulk issue date) to the date the adjustment is processed.

**Scenario 3 - surcharge not paid in full**

The employer has not paid the 2004 portion of the total NEER surcharge.

If the appeal decision results in a reduced surcharge for 2004, credit interest is not calculated for the reduced amount. Also, there is no adjustment to any debit interest calculated to date.

If the appeal decision results in a net credit for 2004, credit interest is calculated, based only on the net credit from November 7, 2007 (the bulk issue date) to the date the adjustment is processed. There is no adjustment to any debit interest calculated to date.

**Debit Interest**

Debit interest will continue to be applied in cases where the employer does not:

- pay the full amount of the disputed premium, or
- provide a letter of credit as security on past premiums due.

For more information on the application of credit and debit interest see 14-02-07, Employer Non-Compliance Interest and Charges.

For the application of the letter of credit see 14-04-05, Alternative Payment Arrangements.

### **Application date**

Credit interest for the purposes of this policy applies to all decisions on appeals made on or after April 7, 2008.

### **References**

#### **Legislative authority**

*Workplace Safety and Insurance Act, 1997*, as amended  
Sections 159(2)(a)

#### **Minute**

Administrative  
#9, March 17, 2008, Page 460