COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 06381-91**

Jean M. Drumm	Employee
Viale Florist	Employer
Florists Mutual	Insurer

REVIEWING BOARD DECISION
(Judges McCarthy, Carroll and Levine)

APPEARANCES
W. Stanley Cooke, Esq., for the employee
Carey H. Smith, Esq., for the insurer

MCCARTHY, J. An April 13, 1999 hearing judge's decision awarded the employee benefits under §§ 34A and 36. The decision did not explicitly award § 50 interest. The insurer filed a timely appeal to the reviewing board and, while the appeal was pending, paid the awarded benefits without interest on June 7, 1999. On or about May 24, 2000, the employee filed a claim seeking § 50 interest.[1] On July 19, 2000, the reviewing board summarily affirmed the award of weekly and specific benefits in the case in chief. The claim for § 50 interest then came on for hearing before the same judge on stipulated facts and on October 16, 2001, the judge filed his decision denying and dismissing the employee's claim for interest.[2]

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[1] General Laws c. 152, § 50, provides:

> Whenever payments of any kind are not made within sixty days of being claimed by an employee, dependant or other party, and an order or decision requires that such payments be made, interest at the rate of ten percent per annum on all sums due from the date of the receipt of the notice of the claim by the department to the date of payment shall be required by such order or decision. Whenever such sums include weekly payments, interest shall be computed on each unpaid weekly payment.

[2] The employee moved under 452 Code Mass. Regs. § 1.20 to amend by adding a claim for a penalty under § 8(1). The judge denied the motion. This denial was not arbitrary or capricious so we do not disturb it. However, it remains open to the employee to file a new claim for this

The judge denied the claim with evident reluctance as he attempted to reach his decision in a manner which comported with an earlier reviewing board decision. His reasoning follows.

> While Section 50 interest benefits are self-operating, this case falls clearly within the fact pattern outlined by the Review Board in **Charles v. Boston Family Shelter**, 11 Mass. Workers' Comp. Rep. 203, 205 (1997). The request for Section 50 interest should either have been part of the initial request, or brought forward through a timely request for an amended decision or appeal.
> Without the clear instructions of **Charles**, I would have held that self-operation meant the insurer should pay Section 50 benefits, even without a specific order to, and that filing a claim would be a proper remedy for that failure. But **Charles** compels me to rule otherwise.

(Dec. 2.)

The principal issue in Charles was whether the employee was permanently and totally incapacitated. A secondary issue involved § 50 interest claimed to be due as a result of an earlier hearing decision denying the insurer's complaint to terminate weekly benefits. In the course of denying the claim for interest, the reviewing board stated:

> [T]he judge's failure to award [§ 50 interest] in his 1994 decision should have been pursued by the employee by either a request for an amended order, or an appeal of that decision. Because the employee's attempt to address that error in the present claim for benefits is untimely, the judge correctly denied the employee's claim for interest on the former award.

Charles, supra at 205.

What was said in Charles, seems out of sync with the procedural history of the present case and with the often repeated principle (see Charles, supra at 205) that § 50 is self-operative. We take that to mean that the employee need do nothing in order to receive interest on unpaid compensation due. In an enforcement proceeding under § 12(1), one would expect the Superior Court to routinely add the interest without any action being taken by the employee.

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penalty at her election. We note that the employee's motion was actually made under 452 Code Mass. Regs. § 1.23(3), regarding amendments of claims, rather than § 1.20, which governs joinder of parties.

Because § 50 is self-operative, Le v. Boston Steel & Mfg. Co., 14 Mass. Workers' Comp. Rep. 75 (2000), and should be construed in such a way as to effectuate its plain meaning, Sullivan v. Town of Brookline, 435 Mass. 353, 360 (2001), we see no prohibition to the employee's request for interest thereunder in a separate, subsequent § 10 claim. Since Charles, supra, drove the administrative judge to the wrong result, we choose not to follow it.

The decision is reversed. The § 50 interest requested by the employee is hereby awarded.

So ordered.

William A. McCarthy
Administrative Law Judge

Martine Carroll
Administrative Law Judge

Frederick E. Levine
Administrative Law Judge

Filed: August 20, 2002