COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 035753-95**

Long Van Le	Employee
Boston Steel & Mfg. Co.	Employer
Mass. Manufacturing SIG c/o Managed Comp., Inc.	Self-Insurer

REVIEWING BOARD DECISION
(Judges Smith, McCarthy and Wilson)

APPEARANCES
Robert M. Peyser, Esq., for the employee
Robert A. Wall, Esq., for the self-insurer

SMITH, J. The employee appeals from a decision of an administrative judge on his claim for § 36 specific injury benefits, which found that the employee had sustained a 45% permanent impairment to the right upper extremity, but reduced the award by 40%. The decision was silent about interest. Because the amount of the § 36(e) award was erroneous, we vacate the award and order the self-insurer to pay the correct amount, together with interest pursuant to § 50.

We recite only those facts pertinent to this appeal. Long Van Le is right hand dominant. (Dec. 3.) On September 9, 1995, he injured his right upper extremity when a large steel fuel tank he and two coworkers were moving fell onto his right shoulder leaving a deep cut and causing him to lose consciousness. (Dec. 4.) The self-insurer accepted liability, paying § 34 total temporary incapacity benefits. Thereafter the self-insurer filed a complaint to discontinue or modify those benefits. The complaint was denied at a § 10A conference and the self-insurer timely appealed to a hearing *de novo*. Meanwhile, Long Van Le filed claims for §§ 13, 30, 34A and 36 benefits. The Department, on March 18, 1998, received the § 36(e) claim. (Dec. 2; Employee claim dated March 17, 1998.) The self-insurer's complaint and Long Van Le's claims were consolidated at hearing. (Dec. 2.)

Long Van Lee underwent an impartial medical examination pursuant to § 11A. Dr. Mark Berenson issued two reports and an addendum, which were admitted into evidence. (Dec. 1-2, 9-11.) The impartial medical examiner opined that Long Van Le had a "45% impairment of his upper right extremity." (Dec. 10; Impartial Exhibit, Addendum.) The judge adopted this opinion. (Dec. 10.)

In her decision, the administrative judge found as follows.

> Based upon the 45% loss of function of the dominant right upper extremity, I find that Mr. Le is entitled to $6799.51 (SAWW of $585.66 x 43 x .60 (shoulder=60% function of the arm) x .45).

(Dec. 11.) The decision was silent as to § 50 interest.

Long Van Le argues on appeal that the amount of the § 36(e) calculation is incorrect as a matter of law, and that he is entitled to interest. We agree.

Section 36 provides in pertinent part:

> (1) In addition to all other compensation to the employee shall be paid the sums hereafter designated for the following specific injuries . . . :
> . . . . (e) For the amputation or permanent, total loss of use of the major arm, a sum equal to the average weekly wage in the commonwealth at the date of the injury multiplied by forty-three . . . .
> (2) Where applicable, losses under this section shall be determined in accordance with standards set forth in the American Medical Association Guides to the Evaluation of Permanent Impairments.

G.L. c. 152, § 36, as amended by St. 1991, c. 398, § 68.

Here the impartial medical examiner reported that Long Van Le sustained a "45% impairment of his upper right extremity which relates to 27% whole person impairment." (Impartial Exhibit Addendum dated April 16, 1999.) The judge apparently construed the impartial opinion as referring only to the employee's right shoulder and applied a conversion formula contained in Circular Letter No. 240. Pursuant to the Circular Letter, an opinion regarding loss of the shoulder, *if expressed as such*, is to be valued at 60% of the § 36(e) entitlement for permanent loss of function of the arm.

In construing the impartial opinion as being limited to the right shoulder, the judge erred. The impartial report was clear and unambiguous[1] and was rendered in the terminology required by the statute. Neither party requested clarification of this language. The impartial report was admitted into evidence without opposition. No other evidence regarding the extent of permanent impairment was admitted. The judge was bound by the impartial medical opinion that the impairment was to the "right upper extremity." Having found that this was the major arm, then the judge was required to award the amount of compensation provided by the § 36(e) formula, without reduction. The judge's award of only $6,799.51 is contrary to law. The employee is entitled to $585.66 (the average weekly wage in the Commonwealth on September 9, 1995, the date of injury) times forty-three, times forty five per cent (585.66 x 43 x .45), to wit: $11,332.52.

Additionally, the employee claims interest on the § 36 award. Section 50 provides:

> Whenever payments of any kind are not made within sixty days of being claimed by an employee, dependent or other party, and an order or decision requires that such payments be made, interest at the rate of ten percent per annum of 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.

G.L. c. 152, § 50, as amended by St. 1991, c. 398, § 77, by § 105 made applicable to claims filed on or after December 23, 1991 (emphasis supplied).

The self-insurer contends that no interest is due on the § 36 claim because there was no evidence that the department had received notice of the claim. (Self-Insurer's Brief, 4.) On the contrary, it is apparent from this record that the department, and the self-insurer, knew that the employee was claiming § 36 benefits. See Dec. 2. Moreover, we disagree that the employee was required to produce evidence of the date that the department received notice of his claim.

[1] According to the Guides to the Evaluation of Permanent Impairment (3d Ed.), a 45% impairment of the upper extremity translates to a 27% impairment of the whole person. Id. at 16, Table 3.

"Procedures within the division of dispute resolution shall be as simple and summary as reasonable." G.L. c. 152, § 11B. The intent of the workers' compensation act is to provide speedy benefit delivery to legitimately injured workers. Press Release of Joint Committee on Commerce and Labor, Nov. 5, 1991; Summary of Weld-Cellucci Bill, Governor's Legislative Packet for St. 1991, c. 398. Interpreting § 50 to require proof of filing dates in every claim would defeat this purpose, by causing every claim to be litigated. An insurer from its own records is able determine whether it has made any payments within sixty days of the assertion of a claim. If the self-insurer is unclear as to the date that the department received the claim, which information it needs to properly calculate the amount of interest due, it may request that information from the department. Such information gathering does not require litigation. Section 50 is self-operative. Charles v. Boston Family Shelter, 11 Mass. Workers' Comp. Rep. 203, 205 (1997). As a matter of law, interest is due on the amount of Long Van Le's § 36 award from the date of receipt of the notice of his claim by the department to the date of payment.

For these reasons, we vacate the prior § 36(e) award and order the self-insurer to pay the employee $11,332.52, together with interest pursuant to G.L. c. 152, § 50.

So ordered.

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Suzanne E. K. Smith
Administrative Law Judge

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Sara Holmes Wilson
Administrative Law Judge

Filed: March 16, 2000

William A. McCarthy
Administrative Law Judge