ALTON RENFROE	)	BRB Nos. 91-170 and
	)	91-170A
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	
	)	
	)	
Self-Insured	)	
Employer-Respondent	)	
Cross-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	
	)	
	)	
MALCOLM BILLINGS	)	BRB No. 94-3702
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BATH IRON WORKS CORPORATION	)	
	)	
and	)	
	)	
COMMERCIAL UNION INSURANCE COMPANY	)	
	)	
	)	
Employer/Carrier-Respondents	)	DATE ISSUED:
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
	)	
	)	DECISION and ORDER
Petitioner	)	ON RECONSIDERATION *En Banc*

Appeals of the Decision and Order Awarding Benefits and Supplemental Decision and Order Awarding Attorney Fees of C. Richard Avery, Administrative Law Judge, United States Department of Labor and the Decision and Order-Awarding Benefits of Martin J. Dolan, Jr., Administrative Law Judge and the Decision and Order on Reconsideration-Awarding Benefits of Joan Huddy Rosenzweig, Administrative Law Judge, United States Department of Labor.

Rebecca J. Ainsworth (Maples & Lomax), Pascagoula, Mississippi, for claimant Renfroe.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for Ingalls Shipbuilding, Incorporated.

Kevin M. Gillis (Troubh, Heisler & Piampiano, P.A.), Portland, Maine for Bath Iron Works and Commercial Union Insurance Companies

Michael S. Hertzig, Joshua T. Gillelan II and Samuel J. Oshinsky, Counsel for Longshore (J. Davitt McAteer, Acting Solicitor of Labor; Carol DeDeo, Associate Solicitor, Janet R. Dunlop, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, SMITH, BROWN, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer has filed a timely Motion for Reconsideration and suggestion for Hearing *En Banc* of the Board's Decision and Order on Reconsideration in *Renfroe v. Ingalls Shipbuilding, Inc.*, BRB Nos. 91-170/A (April 25, 1995). The Director responds, urging that employer's Motion for Reconsideration be summarily denied and that the Board, before or after consideration *en banc*, redesignate its prior decision for publication.

Employer has also filed a timely motion for reconsideration of the Board's Decision and Order in *Billings v. Bath Iron Works Corp.*, BRB No. 94-3702 (April 25, 1995), in which it asserts that the Director's appeal should have been dismissed due to lack of standing under the Supreme Court's decision in *Director, OWCP v. Newport News Shipbuilding & Dry Dock Co. [Harcum]*, ___ U.S. ___, 115 S.Ct. 1278, 29 BRBS 87 (CRT)(1995). The Director responds, urging denial of employer's motion and, in addition, requests reconsideration of the Board's April 25, 1995, Decision and Order.

We grant the parties' motions for reconsideration, consolidate the cases for purposes of decision, and consider the issues raised *en banc*. *See* 20 C.F.R. §§802.104, 802.407(b),(c). The

motions presented in the consolidated cases involve the questions of whether *Harcum* affects the Director's standing to file an appeal with the Board under Section 21(b)(3) of the Act, 33 U.S.C. §921(b)(3), and the proper date for assessing interest on a hearing loss award in light of the decision of the United States Supreme Court in *Bath Iron Works Corp. v. Director, OWCP*, ___ U.S. ___, 113 S.Ct. 692, 26 BRBS 151 (CRT) (1993).

To briefly recapitulate the relevant facts, in its original Decision and Order in *Renfroe v. Ingalls Shipbuilding, Inc.*, BRB Nos. 91-170/A (June 23, 1993) (unpublished), the Board, addressing claimant's appeal, held that claimant's occupational hearing loss must be calculated under Section 8(c)(13) of the Act, 33 U.S.C. §908(c)(13), pursuant to the decision in *Bath Iron Works*. As no party challenged the administrative law judge's finding that claimant sustained a .9 percent binaural impairment or the stipulated compensation rate of $201.77, the Board modified the administrative law judge's award to reflect employer's liability for 1.8 weeks of compensation at the stipulated rate of $201.77 per week.

Thereafter, the Director filed a Motion for Reconsideration in which he argued that consistent with the Supreme Court's decision in *Bath Iron Works*, the case must be remanded to the administrative law judge for a determination of claimant's average weekly wage at the time of his last exposure to harmful noise. In addition, pertinent to employer's present motions, the Director also argued that claimant Renfroe's right to interest began to accrue as of the date his hearing impairment arose, *i.e.*, the date of his last exposure to harmful noise, which occurred in 1971. Employer responded, expressing agreement with the Director that the case should be remanded for a determination of the proper compensation rate but asserted that any pre-judgment interest should be calculated on a simple, rather than a compound, basis.

In its Decision and Order on Reconsideration, the Board, agreeing with the Director and employer, remanded the case for a determination of claimant Renfroe's average weekly wage at the time of his last exposure to injurious noise consistent with the Supreme Court's holding in *Bath Iron Works*. With regard to the imposition of interest, the Board expressed agreement with the Director that, pursuant to the Supreme Court's holding in *Bath Iron Works* that the date of injury is the last day of workplace exposure, interest is due on the award and should be computed from the time that claimant's entitlement to compensation commenced but agreed with employer that the interest awarded is to be computed on a simple basis. Accordingly, the Board instructed the administrative law judge to award claimant interest on any past-due compensation on remand.

In the Motion for Reconsideration and Suggestion for Reconsideration *En Banc* of that decision currently before the Board, employer asks the Board to reconsider its determination that the interest due on the award should be computed from the time that claimant's entitlement to compensation commenced. Employer asserts that requiring employer to pay interest at a time when neither the employer nor the employee was aware that there was any "injury" violates all notions of equity and due process and would result in the payment of hundreds of thousands of dollars in interest in cases where the general purpose of interest, *i.e.*, to make claimant whole, would not be served. Accordingly, employer requests that the Board issue an Order holding that claimant

Renfroe's right to interest began to accrue from the date that employer was provided with notice of claimant's injury, February 23, 1987. The Director responds, urging that employer's motion for reconsideration be summarily denied. Citing *Harcum*, employer responds that as the Director was not a person "adversely affected or aggrieved," he lacked standing to raise the interest issue on appeal.

In *Billings*, the Board addressed the Director's appeal of Administrative Law Judge Dolan's decision awarding claimant benefits under Section 8(c)(13) for a 29.08 percent binaural loss. Although Judge Dolan had based claimant's average weekly wage on his earnings prior to his 1983 retirement, on reconsideration of this issue, Administrative Law Judge Joan Huddy Rosenzweig, who entertained the case upon Judge Dolan's retirement, agreed with the parties that as the date of last injurious exposure was in 1980, claimant's average weekly wage must be determined at that time. Pertinent to the present proceedings, she also found, in accordance with the parties' motion, that the award was to commence on May 7, 1985, the date of the filing of the claim, rather than on June 30, 1983, as found by Judge Dolan, and awarded interest "on all compensation and unpaid benefits . . . from the date such payment was originally due until actually paid." Decision and Order on Reconsideration at 3.

On appeal, the Director argued that claimant is entitled to interest on unpaid benefits which accrued from the date of his injury in 1980, rather than from the date when employer was first "notified" or otherwise obtained "knowledge" of the impairment, shortly following the receipt of the audiogram in May 1985. Accordingly, the Director asserted that the administrative law judge's commencement of the award of benefits on May 7, 1985, should be vacated, and the case remanded to allow her to determine the precise date of claimant's last injurious exposure in 1980, and to modify her order to reflect an award of interest commencing on that date. Employer and claimant responded, agreeing with Director that the case should be remanded for findings regarding commencement of the award.

In its decision, the Board agreed with the Director that in light of the Supreme Court's holding in *Bath Iron Works*, the administrative law judge erred in determining that the commencement date for the award of claimant Billings' hearing loss benefits was May 7, 1985. Accordingly, the Board vacated Judge Rosenzweig's determination in this regard and modified her decision to reflect that claimant's award under Section 8(c)(13) commenced in 1980, consistent with her finding regarding claimant's last injurious exposure and the applicable average weekly wage. The Board, however, deemed it unnecessary to remand for the administrative law judge to determine the precise date in 1980 when claimant's last injurious exposure occurred for purposes of the award of interest, stating, "inasmuch as claimant is entitled to simple, not compound, interest at a rate determined under 28 U.S.C. §1961, and the entire award of compensation for 58.16 weeks was due prior to the time that the award of benefits was made, claimant is entitled to interest on the entire award." Decision and Order, slip op. at 3.

In its motion for reconsideration in *Billings*, employer asserts that the Director's appeal should have been dismissed pursuant to *Harcum* for lack of standing. The Director responds that

Harcum is irrelevant because his appeal was filed pursuant to Section 21(b)(3) of the Act, not Section 21(c), 33 U.S.C. §921(c), and points out that employer had previously agreed that the case should be remanded for the reasons outlined by the Director. The Director also requests reconsideration of the Board's refusal to remand the case for the administrative law judge to determine the precise date of claimant's last injurious exposure, arguing that the Board's refusal to remand confounds the application of interest and undercompensates the claimant. The Director maintains that under the proper computations utilizing the longstanding procedures and formulae embodied in the *LHWCA Procedure Manual*, Ch. 8-201, employer owes not only the entire 58.16 weeks of compensation provided under Section 8(c)(13), but also interest on that amount assessed from the date of claimant's last injurious exposure until the date those benefits were paid. Accordingly, the Director requests the Board to remand the case for the administrative law judge to determine the date of claimant's last injurious exposure, and to modify the administrative law judge's decision to reflect claimant's right to interest from that date.

We first address employers' arguments relating to the Director's standing to appeal. The Director's standing to appeal to the Board is governed by Section 21(b)(3) of the Act, which permits an appeal by a "party in interest." The Director is included as a "party in interest" under the applicable regulation, 20 C.F.R. §801.2(a)(10). As *Harcum* addresses the Director's standing to appeal to the United States Courts of Appeals under Section 21(c), the Board recently rejected arguments similar to those raised by employers here. *Ahl v. Maxon Marine, Inc.*, 29 BRBS 125 (1995)(Order). The distinction between Section 21(b)(3) and (c) with regard to the Director's standing was thoroughly discussed by the United States Court of Appeals for the Fifth Circuit in *Ingalls Shipbuilding Div. v. White*, 681 F.2d 272, 14 BRBS 988, *reh'g denied*, 690 F.2d 905 (5th Cir. 1982). In *White*, the court initially stated that proceedings before the Board are not proceedings under Article III of the United States Constitution to which either "case or controversy" or prudential standing requirements apply; thus, parties who are not "injured in fact" may be heard in the administrative forum provided by the Board. The court also discussed the fact that Congress chose two distinct phrases in the statute, permitting appeal to the Board by any "party in interest" under Section 21(b)(3), while limiting appeals to the federal courts under Section 21(c) to "persons adversely affected or aggrieved." Finally, the court upheld Section 801.2(a)(10), providing the Director with automatic standing before the Board, as a valid construction of Section 21(b)(3). As *Harcum* does not address the Director's standing under Section 21(b)(3), it does not affect this reasoning. Accordingly, employers' motion to dismiss the Director's appeal in *Billings* and contention that the interest argument was not properly before the Board on reconsideration in *Renfroe* are rejected.

Turning to the merits of the interest issue raised on reconsideration in these cases, which involve retired employees who filed hearing loss claims, the Director argues that interest begins to accrue on these hearing loss awards on the date when claimant is injured and entitlement commences, *i.e.*, at the time of claimant's last exposure to injurious noise in the workplace. The Director's argument is based on the Supreme Court's holding in *Bath Iron Works* that claimant's date of last exposure is the date of injury in a hearing loss case involving a retiree, so that his average

weekly wage is computed and his entitlement to benefits commences as of that date. *See Moore v. Ingalls Shipbuilding, Inc.*, 27 BRBS 76 (1993). Upon reconsideration, we reject the Director's theory, as we do not agree that interest begins to accrue on the date of injury in these cases, where benefits were not due under the Act at that time.

The award of interest on benefits due under the Act is not statutorily mandated but has been upheld as consistent with the Congressional purpose of fully compensating claimants for their injuries. *See Foundation Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71 (CRT) (9th Cir. 1991); *Quave v. Progress Marine*, 912 F.2d 798, 24 BRBS 43 (CRT), *on reh'g*, 918 F.2d 33, 24 BRBS 55 (CRT) (5th Cir. 1990), *cert. denied*, 500 U.S. 916 (1991); *Strachan Shipping Co. v. Wedemeyer*, 452 F.2d 1225 (5th Cir. 1971), *cert. denied*, 406 U.S. 958 (1972). Where an award of interest is not statutorily mandated, it is incumbent upon the court to fashion rules for imposition of interest which reasonably effectuate the Congressional policies underlying the overall statutory scheme. *See generally National Labor Relations Board v. Seven-Up Bottling Co.*, 344 U.S. 344 (1953). Since the Act contains specific penalty provisions intended to encourage the prompt resolution of claims, *see* 33 U.S.C. §914(e), (f), interest is assessed on past due benefits not for the purpose of penalizing employer for misconduct, but to make the claimant whole for his injury where employer has withheld benefits and had the use of money due claimant. *See Foundation Constructors*, 950 F.2d at 621, 25 BRBS at 71 (CRT); *Smith v. Ingalls Shipbuilding Div., Litton Systems Inc.*, 22 BRBS 46 (1989); *Grant v. Portland Stevedoring Co.*, 16 BRBS 267 (1984), *on reconsideration*, 17 BRBS 20 (1985). Cases under the Act primarily involve pre-judgment interest, *i.e.*, interest accrued on unpaid benefits during the period prior to the administrative law judge's decision. *Id.*, 17 BRBS at 22-23. These hearing loss cases involve whether this period of pre-judgment interest commences on the date when these retired claimants' entitlements commenced, which is the date of last exposure to injurious noise under *Bath Iron Works*, or on the date benefits are due under the Act.

To put this issue into context, in *Renfroe*, claimant's last exposure occurred in 1971, some 16 years before the audiogram evidencing a loss of hearing, which was followed by the filing of a claim and notice to employer. In *Billings*, claimant's last exposure occurred in 1980, and his claim was filed in 1985, immediately after he received a copy of a 1981 audiogram. The Director asserts in these cases that in order to make claimants whole, interest should be assessed as of the date claimants' entitlement to benefits first arose, regardless of when either party became aware of the injury, while employers challenge the imposition of interest at a time when they were unaware of claimants' injuries. The Director contends that employers' lack of knowledge is irrelevant because interest is not a penalty for misconduct but is necessary to put the parties in the position in which they would have been if the claimants' entitlement had been recognized and discharged as soon as it existed. In *Renfroe*, for example, the Director asserts that employer has had the use of money to which claimant was entitled since 1971, when claimant retired and his exposure ceased, and thus employer cannot legitimately complain that it has been prejudiced in any way by the assessment of interest as of that date.

We do not agree that assessing interest on benefits as of the date of the injury rather than

when they become due is necessary in order to make claimants whole. In these cases, claimants' last exposures occurred years prior to either claimants' or employers' awareness of a hearing loss disability under the Act. Contrary to the Director's argument, employers' lack of knowledge of claimants' injuries is not irrelevant, because under the statute, benefits are not due until employer has notice or knowledge of the injury. Section 14(a), 33 U.S.C. §914(a), provides for the prompt payment of compensation without an award, except where liability is controverted. Pursuant to Section 14(b) of the Act, 33 U.S.C. §914(b), the first installment of compensation becomes "due" on the fourteenth day after employer is notified of the injury under Section 12, 33 U.S.C. §912, or has knowledge of the injury, on which date, all compensation then due shall be paid. An employer's date of notice or knowledge of the injury thus triggers its obligation to either pay benefits or formally controvert the claim, and an employer's legal obligation to pay all accrued compensation does not arise until 14 days after the date of notice or knowledge of the injury. Inasmuch as an employer has no legal obligation to pay compensation until 14 days after receiving notice or knowledge, it logically follows that interest should also be assessed from this date because interest attaches to overdue compensation payments and no payments are overdue prior to this date.

The holding that interest accrues on past-due compensation consistent with an employer's payment obligation under Section 14(b) is supported by case precedent. In *Foundation Constructors*, 950 F.2d at 625, 25 BRBS at 76 (CRT), the court upheld the requirement of interest on past-due compensation as reasonable and consistent with the purposes of the Act, adopting the Director's view in that case that "interest on past-due compensation serves the purposes of the Act in fully compensating workers for their valid claims." In *Strachan Shipping*, 452 F.2d at 1225, the United States Court of Appeals for the Fifth Circuit, within whose jurisdiction the *Renfroe* cases arises, held that the fact finder, in making an award of compensation under the Act, had the authority to include interest at the rate of 6 percent per annum on each installment of compensation from the time payment would have been due had the employer not controverted the claim. Similarly, in *Cunningham v. Donovan*, 304 F. Supp. 913 (E.D.La. 1969), the United States District Court for the Eastern District of Louisiana held that the district director erred in failing to award interest and remanded for him to modify the award in compliance with Section 14(b) of the Act on each past due installment of compensation from the original due date until the date of payment. Moreover, a number of prior Board cases have also implicitly recognized that interest is assessed from the date that benefits are due. *See, e.g., Morris v. Washington Metropolitan Area Transit Authority,*, 12 BRBS 208 (1978); *Watkins v. Newport News Shipbuilding & Dry Dock Co.*, 8 BRBS 556 (1978), *rev'd on other grounds sub nom. Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP*, 594 F.2d 986, 9 BRBS 1089 (4th Cir. 1979).

Cases decided under Title IV of the Coal Mine Health and Safety Act, 30 U.S.C. §901 *et seq.* (the Black Lung Act), which incorporates many provisions of the Longshore Act, *see* 30 U.S.C. §932(a), also provide guidance on the interest issue presented here. *See Peabody Coal Co. v. Blankenship*, 773 F.2d 173, 8 BLR 2-51 (7th Cir. 1985). Based on the relationship between the two statutes, the court in *Blankenship* found an analogy to the Longshore Act appropriate in addressing statutory and regulatory provisions regarding interest on Black Lung claims, 30 U.S.C. §932(d); 20 C.F.R. §725.608(a). Specifically, Section 725.608(a) provides that employer is liable for interest on

past due benefits "computed from the date on which such benefits were due and payable." The court recognized that the Longshore Act is silent with regard to the imposition of interest on past due benefits, but stated "courts have held that such interest should accrue from the date benefits were due," citing *Strachan Shipping. Id.,* 773 F.2d at 176, 8 BLR at 2-55. Rejecting the Board's reliance on Longshore decisions in awarding claimant interest from the date he was eligible to receive benefits, the court stated, "under decisions like *Strachan Shipping*, interest on past due benefits accrues from the date benefits are *due*, and not from the date a claimant is eligible to receive benefits." *Id.* (emphasis in original)(footnote omitted). The court held that under the Black Lung Act, benefits are due 30 days after the initial determination of eligibility, and interest also accrues from that point, as "it is only then that the employer profits from the unauthorized retention of a claimant's funds." *Id. Accord Youghiogheny & Ohio Coal Co. v. Warren,* 841 F.2d 134, 11 BLR 2-73 (6th Cir. 1987); *Stapleton v. Westmoreland Coal Co.*, 785 F.2d 424, 8 BLR 2-109 (4th Cir. 1986)(*en banc*), *rev'd on other grounds sub nom. Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Bethlehem Mines Corp. v. Director, OWCP [Simila]*, 766 F.2d 128, 8 BLR 2-4 (3d Cir. 1985). Of particular interest here, in each of these cases, the Director asserted that interest accrues from the date employer incurred a payment obligation, rather than the date claimant became eligible to receive benefits, and the courts adopted the Director's view, specifically stating in *Stapleton* and *Blankenship* that his interpretation was consistent with the computation of interest under the Longshore Act.

The Director's arguments in the present case simply cannot justify holding employers liable for interest for many years prior to the time that they became aware of an injury and their legal obligation to pay benefits arose, as this position is directly contrary to the statute. The Director asserts that since the purpose of an interest award is not to penalize employers but to fully compensate claimants, employers' arguments regarding their lack of awareness of the hearing loss prior to receiving notice are irrelevant because "fault" is irrelevant. The Director's argument is rejected, as it overlooks the fact that interest is assessed to fully compensate claimant where employer has withheld or delayed benefits and thus has had the use of money due claimant. As the court stated in *Foundation Constructors,* 950 F.2d at 625, 25 BRBS at 76 (CRT),

> a dollar tomorrow is not worth as much as a dollar today. Allowing an employer to delay compensation payments interest-free would reduce the worth of such payments to the claimant, undermining the remedial intent of the Act.

In *Strachan Shipping*, 452 F.2d at 1228, moreover, the court noted that interest bears little resemblance to the assessments in Section 14(e) and (f) of the Act which are treated as penalties against employer. In upholding the award of interest despite employer's compliance with the statute by timely controverting the claim, the court adopted the proposition that where "an award is wrongfully withheld (and under the law it is wrongfully withheld, if it be eventually determined that it should have been paid)," then interest is due on that award "from the date it should have been paid." *Strachan Shipping*, 452 F.2d at 1230, *citing Parker v. Brinson Construction Co.*, 78 So.2d

873 (Fla. 1955).[1] While an employer's "fault" in the sense of misconduct or failure to comply with the statute may be said to be irrelevant, as employer's misconduct is not a prerequisite to an award of interest, the employer's obligation to pay benefits due is directly relevant to whether benefits were "wrongfully withheld," in the sense that they were not paid when due. The date an award "should have been paid" is the date benefits are due. Since an employer must have knowledge of an injury before benefits are due and it incurs a payment obligation under the Act, the date it knows of an injury is not only relevant, but it is critical, in determining the onset date for the accrual of interest. An employer cannot wrongfully withhold or delay benefit payments until they are due.

The principal basis for the Director's argument is that, while the delay in payment between the date of injury and the date employer received knowledge of the injury was not due to either party's fault,[2] interest must be assessed from the date of injury in order to fully compensate claimants for their hearing losses. As we have discussed, however, interest makes claimants whole for their injuries where employers have withheld benefits which are due under the Act, and employers cannot withhold benefits until they are due. In these hearing loss claims, no benefits were due at the time of claimants' last exposures to noise. These claims were filed by retirees years after leaving employment and are a direct result of the 1984 Amendments to the Act which liberalized the statutory time for filing hearing loss claims, *see* 33 U.S.C. §908(c)(13)(D), and clearly allowed retired employees to obtain benefits. Requiring employers to pay interest in these hearing loss cases for the years prior to the time that any benefits were due under Section 14(b) of the Act is fundamentally unfair to the employers who, unaware of the claims, were not profiting by delaying

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[1]The Board relied on this language in *Smith,* 22 BRBS at 46, in which the administrative law judge refused to assess interest on benefits due a retiree prior to the date of passage of the 1984 Amendments to the Act. Following the principles stated in *Strachan Shipping,* the Board found that there are many events which affect employer's liability for benefits, such as amendment of a statute, which do not affect its liability for interest once claimant's entitlement is determined. Interest is thus assessed regardless of whether employer has fully complied with statutory requirements if employer has withheld money ultimately found to be due claimant. In *Smith,* the Board held that interest was due on all unpaid accrued benefits regardless of the date of passage of the amendments. Similarly, in the present case, as is explained in detail, *infra,* claimants will receive interest on all unpaid accrued benefits once they become due.

[2]Despite this assertion, the Director suggests that employer bears greater responsibility for the delay in payments. In his initial briefs in these cases, the Director argued that employer must be liable for interest back to the date of entitlement in order to ensure that employers do not retain a profit from delaying their "payment obligations" through a "hear-no-evil, see-no-evil approach" to these work-related conditions. While focusing more on fault as irrelevant in his response brief in *Renfroe*, the Director continues this theme by asserting that employer bore more responsibility than its workers to ascertain the impact of noisy working conditions on its workers. We reject the notion that somehow the employers in these cases bore greater responsibility for the delay in hearing loss payments.

payments due or earning interest on money reserved at the claimants' expense while disputing liability for the claims. Moreover, in our view awarding interest back to the date of last exposure would result in a windfall to the claimants, who at the time of their last injurious exposures had no legally cognizable claims and accordingly no realistic expectation of being paid until years later when they obtained audiometric evidence of the degree of harm sustained and filed their claims.

We agree with the employers that commencing the accrual of interest on the date that benefits are due, rather than at the time that claimants' right to compensation commenced under *Bath Iron Works*, will fully compensate the retired claimants in these hearing loss cases. We find no merit in the Director's argument that interest must accrue from the date of injury or last exposure to noise in order to fully compensate claimant because retirees with hearing loss receive compensation based on earnings in the last year of exposure, which generally results in a lower rate than retirees suffering from other occupational diseases who receive benefits based on generally higher rates at the time of their awareness of their diseases. *See* 33 U.S.C. §910(i). This fact, however, is a result of the Supreme Court's construction of the statutory scheme for compensating hearing loss of retirees set forth in *Bath Iron Works*, and the Director advocated the position adopted by the Court. The assessment of interest is not intended to augment a statutory scheme which compels a lower average weekly wage as a matter of law; such a result is not necessary in order to make claimant whole where claimant is receiving benefits at the rate set by the Act.

We conclude that interest in these hearing loss claims properly accrues on unpaid benefits from the date they become due under Section 14(b). We reach this result based on the clear language of the statute, which commences an employer's payment obligation on the date it has notice or knowledge of the injury. As the Supreme Court has stated, in construing a statute, the beginning point must be its language, and when the statute is clear, judicial inquiry into its meaning is ended in all but the most extraordinary circumstances. *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 26 BRBS 49 (CRT) (1992). While deference is due the Director's interpretation of the Act, a reviewing body need not defer to an agency position which is contrary to the unambiguous directive of the Act. *Id.* Based on Section 14(b) of the Act, benefits are due when employer receives notice or knowledge of the injury. As interest is assessed on past due benefits, claimants are "made whole" for their injuries when they receive interest commencing on the date benefits are due which is assessed on all benefits which are not paid when due. Specifically, interest will attach to the entire award which has accrued since the date of injury and is unpaid on the date benefits are due, similar to the assessment of a Section 14(e) penalty,[3] *see Pullin v. Ingalls Shipbuilding, Inc.*, 26 BRBS 45 (1993) (order on reconsideration), and will accrue on that amount until the award is paid. Thus, if the entire scheduled hearing loss award should have been paid as of the date employer receives notice or knowledge of the injury, interest will attach to the entire award and will accrue as of that date.

[3]Based on the language of Section 14(b), the Board has previously recognized that the 10 percent penalty assessed under Section 14(e), 33 U.S.C. §914(e), where employer fails to timely pay or controvert a claim, attaches to all accrued unpaid benefits from the date of injury as of the date payments become due.

Accordingly, we hold that interest is assessed on all accrued unpaid compensation as of the date that benefits are due under Section 14(b) and accrues on all benefits due and unpaid from that date until paid. In view of this holding, we resolve the motions pending before us in the consolidated cases in the following manner. In both cases, the employer's request to dismiss the Director's appeal for lack of standing is denied. In *Renfroe*, we grant the relief requested by employer and accordingly modify our Decision and Order On Reconsideration to reflect that claimant is not entitled to interest commencing as of the date of his last injurious exposure in 1971 but is entitled to interest as of February 23, 1987, in accordance with the parties' stipulation regarding employer's notice of the injury. Since the entire award of benefits became due as of that date, the administrative law judge on remand should award interest commencing February 23, 1987, on the entire award due and unpaid at the appropriate rate.[4]

In *Billings*, the Director's motion to remand the case for a determination of the exact date of claimant's retirement is denied. The Board's April 25, 1995, Decision and Order is modified to reflect that interest is to be assessed on benefits due as of May 7, 1985, consistent with the administrative law judge's decision in this case. Since the onset date for the award is in 1980, the entire award was due on May 7, 1985. Thus, commencing May 7, 1985, interest is assessed on the entire amount due and unpaid at the appropriate rate.

Accordingly, the motions for reconsideration are granted and the prior decisions modified in accordance with this opinion. 20 C.F.R. §802.409.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

[4]The Director's motion for publication of the Board's prior decision in *Renfroe* is denied, but our decision today will be published in light of the importance of the issues presented.

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge