

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

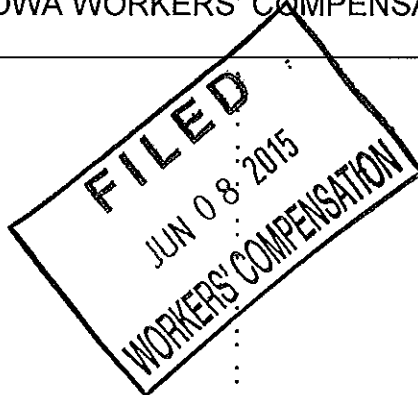
KIRK REINIER,
Claimant,

vs.

HW BRAND,
Employer,

and

RTW, INC.,
Insurance Carrier,
Defendants.



File No. 5043096

ARBITRATION

DECISION

ON PENALTY

Head Note No.: 4000.2

STATEMENT OF THE CASE

Kirk Reinier, the claimant, seeks additional workers' compensation benefits from defendants, HW Brand, an employer, and its insurer, RTW, Inc., for an unreasonable delay in paying permanent partial disability benefits awarded to claimant in a prior arbitration proceeding. Presiding in this matter is Larry P. Walshire, a deputy Iowa Workers' Compensation Commissioner. An oral evidentiary hearing commenced on May 13, 2015, but the matter was not fully submitted until the receipt of the parties' briefs and argument on May 22, 2015. Oral testimonies and written exhibits received into evidence at hearing are set forth in the hearing transcript.

Claimant's exhibits were marked numerically. Defendants' exhibits were marked alphabetically. References in this decision to page numbers of an exhibit shall be made by citing the exhibit number or letter followed by a dash and then the page number(s). For example, a citation to claimant's exhibit 1, pages 2 through 4 will be cited as, "Exhibit 1-2:4." References to a page of a transcript shall be to the actual page number of the original transcript, not to the page number of a copy containing multiple pages of the original transcript.

ISSUES

The only issue submitted by the parties is the extent of claimant's entitlement to penalty benefits for an unreasonable delay or denial of weekly benefits pursuant to Iowa Code section 86.13.

FINDINGS OF FACT

A review of the agency file indicates that on January 23, 2014, an arbitration decision was filed awarding claimant the following weekly benefits:

1. Defendants shall pay to claimant one hundred (100) weeks of permanent partial disability benefits at a rate of four hundred eighty-nine and 86/100 dollars (\$489.86) per week from March 27, 2012.
2. Defendants shall pay to claimant the sum of five thousand and 00/100 dollars (\$5,000.00) in penalty benefits.
3. Defendants shall pay accrued weekly benefits in a lump sum and shall receive credit against this award for all benefits previously paid.
4. Defendants shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.

On January 31, 2014, in a ruling on rehearing, the award of \$5,000.00 in penalty benefits contained in paragraph two was stricken from the arbitration decision. Consequently, because there was no appeal of the arbitration decision and the ruling on rehearing, the decision and ruling did not become a final agency decision until February 20, 2014, 20 days after the filing of the ruling on rehearing. Administrative Rule 876 IAC 4.25.

At the hearing in this proceeding, I requested claimant's attorney to perform the necessary mathematical calculations in his post-hearing brief showing claimant's entitlement to penalty benefits pursuant to our rules and case law. This would first involve calculating the amounts due including interest pursuant to the award at the time the award became final. This was not done. Claimant simply used the filing date of the decision as the due date and then said the amount was "a little over \$45,000.00. Although a penalty cannot be imposed for a denial or delay in paying interest, interest calculations are necessary in penalty cases because benefit payments are first applied to unpaid interest and only the remainder is applied to the principal amount due, as will be explained in the Conclusions of Law section of this decision.

According to the hearing report filed at the time of the hearing in the prior proceedings on December 12, 2013, the parties agreed that claimant had been paid 15 weeks of permanent partial disability benefits at the stipulated weekly rate of \$489.86 prior to hearing, and defendants were to receive a credit against the award for these prior payments. Consequently, claimant was only entitled to an additional 85 weeks of permanent partial disability benefits at the time the arbitration decision became final on February 20, 2014. At that time, 99.429 weeks of awarded benefits had accrued. A few days later claimant became entitled to the full award less the value of the 15 weeks previously paid or a sum of \$41,638.10; the full value of the award of \$48,986.00 less the value of the 15 weeks previously paid, \$7,347.90.

In his post-hearing brief, claimant states that he received a number of checks totaling \$30,301.31 on February 26, 2014. Defendants in an email to claimant's attorney on March 20, 2014 asserted that this figure is \$70.00 more or \$30,371.32. (Exhibit 2) Claimant's Exhibit 4 contains the checks claimant received at this time, and they total the amount asserted by claimant. I therefore find claimant's assertion of amounts paid on February 26, 2014 to be the correct amount.

After claimant's attorney complained that the February 26, 2014 payment was not sufficient to pay off the award and failed to account for interest due on the award, claimant received an additional \$14,904.26 on March 22, 2014. At this time, claimant had received \$45,205.57, which is \$3,567.47 more than his principal entitlement. Defendants stated in a March 20, 2014 email, referred to above, the extra amount was for interest. Except for the \$70.00 discrepancy and due to the lack of any different calculations on interest from claimant, I must assume that defendants' interest payment was correct for the most part. In a reply email on March 21, 2014, claimant's attorney asserted claimant is owed a penalty because the first payment was 13 days late and the second payment was 39 days late. (Ex. 2) That email did not challenge the insufficiency of the interest payment. In response to this complaint, claimant received \$3,000.00 on April 4, 2014 and another \$2,000.00 a year later on April 2, 2015. These last two payments were labeled by defendants as a voluntary penalty payment. (Ex. B)

I find that the first payment was only five days after the award became final. The second payment was 35 days after the award became final. I find that the award plus interest was paid in full with these two payments.

Defendants did not offer any evidence to explain the reasons for the delays in these payments.

There is no evidence of any prior penalties assessed against these defendants.

CONCLUSIONS OF LAW

Claimant seeks additional weekly benefits under Iowa Code section 86.13 (4). This provision states that if a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the industrial commissioner shall award extra weekly benefits in an amount not to exceed 50 percent of the amount of benefits that were unreasonably delayed or denied if the employee demonstrates a denial or delay in payment or termination of benefits and the employer has failed to prove a reasonable or probable cause or excuse for the denial, delay or termination of benefits. Iowa Code section 85.13(4)(b). A reasonable or probable cause or excuse must satisfy the following requirements:

1. The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee;

2. The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits;
3. The employer or insurance carrier contemporaneously conveyed the basis of the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay or termination of benefits.

(Iowa Code section 86.13(4)(c))

The employer has the burden to show a reasonable and probable cause or excuse. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable." Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996); Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996). In determining the amount of penalty, the commissioner is to consider factors such as the length of the delay, the number of delays, the information available to the employer regarding the employee's injury and wages, and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

Pursuant to Iowa Code section 85.30 and applicable case law including Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, (Iowa 1996) and Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229, 234-236 (Iowa 1996), the first compensation payment week begins with the first day of entitlement and weekly benefits are to be paid by the end of a compensation payment week composed of 7 calendar days. Id. at 235. Interest is owing if payments are not made in full on the date that they are due. Id. Payments are applied first to unpaid interest and next upon the principal amount due. Christenson at 262.

Penalty cannot be awarded for non-payment or late payment of interest. Penalty is not imposed for delayed interest payments. Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008); Davidson v. Bruce, 594 N.W.2d 833, 840 (Iowa App. 1999).

Claimant's only entitlement to penalties in this case is for the five-day delay in making the first payment and the 35-day delay for the final payment of principal and interest.

However, claimant was paid an additional \$5,000.00. Claimant asserts defendants cannot assert unilaterally that this payment is for a penalty. He asserts that this payment should be considered an overpayment of weekly benefits and can only claim credit for this overpayment against future claims that may be asserted by claimant, not this claim. Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129 (Iowa 2010). However, when claimant demands a penalty and subsequently receives payment from defendants in response to this demand labeling the payment as a voluntary penalty payment, then it is a penalty payment and not an overpayment of weekly benefits.

Finally, I cannot agree that the actions of these defendants are so grievous that the maximum penalty of 50 percent should be imposed. The payments were only days, not months or years late. A \$5,000.00 penalty, which is about 11 percent of the award plus interest, appears to be a reasonable penalty for the delays in this case. Claimant received his entitlement to penalties prior to the filing of his petition for penalties. Consequently, defendants shall be awarded costs.

ORDER

1. Claimant shall take nothing further.
2. Claimant shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33.

Signed and filed this 8th day of June, 2015.



LARRY WALSHIRE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Randall Schueller
Attorney at Law
1311 – 50th St.
West Des Moines, IA 50266
randy@loneylaw.com

Thomas D. Wolle
Attorney at Law
115 – 3rd St. SE, Ste. 1200
Cedar Rapids, IA 52401
twolle@simmonsperrine.com

LPW/sam

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.