BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL CAIN, Claimant, vs. CITY OF NEW HARTFORD, Employer, and IMWCA, Insurance Carrier, Defendants.	File No. 5048974 A P P E A L D E C I S I O N Head Notes: 4000, 4000.2

Defendants City of New Hartford, employer, and its insurer, IMWCA, appeal from a section 86.13 penalty decision filed on April 4, 2019. Claimant Michael Cain cross-appeals. The penalty phase of this case was heard and considered fully submitted before the deputy worker's compensation commissioner on February 18, 2019.

The deputy commissioner found claimant proved entitlement to penalty benefits for a delay in payment of the original October 30, 2017, arbitration award.

Defendants assert on appeal that the deputy commissioner erred in finding claimant is entitled to receive penalty benefits.

On cross-appeal, claimant asserts the award of penalty benefits should be increased from 15 percent to 50 percent of the amount of benefits that were allegedly delayed unreasonably.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, pursuant to Iowa Code sections 86.24 and 17A.15, I respectfully reverse the deputy commissioner's finding that claimant is entitled to penalty benefits from defendants. I provide the following analysis for my decision:

The original arbitration decision was issued on October 30, 2017. (Exhibit 1) The deputy commissioner determined claimant satisfied his burden of proof to establish he sustained permanent disability as a result of the April 25, 2013, work injury that extended beyond claimant's right eye into the body as a whole. (Arbitration Decision, page 10) The deputy commissioner found claimant sustained ten percent industrial disability, entitling claimant to receive 50 weeks of permanent partial disability benefits. (Arb. Dec., pp. 12-13) Lastly, the deputy commissioner awarded penalty benefits for an underpayment in benefits. (Arb. Dec., pp. 13-14)

Given that the arbitration decision was issued on October, 30, 2017, the original deadline to file an appeal was November 19, 2017. 876 IAC 4.27

Defendants filed a Motion for Enlargement and Clarification on November 14, 2017. (Ex. A) Defendants sought enlargement, clarification, and/or rehearing of the arbitration decision, on the issue of which rate of interest applies to the unpaid weekly benefits awarded in light of the legislative changes to Iowa Code section 85.30 which became effective in July 2017. (Id.) The filing of a Rule 876-4.24 Motion tolls the otherwise applicable appeal period. 876 IAC 4.27.

On December 13, 2017, the deputy commissioner ordered that the arbitration decision would be re-examined and the parties could engage in oral argument. (See Ex. B, p. 1)

On January 9, 2018, counsel for defendants wrote to claimant's counsel, indicating his clients would not be appealing the arbitration decision. (Ex. C, p. 1) In the same correspondence, defendants inquired as to claimant's intentions regarding an appeal of the arbitration decision. (Id.) In the event claimant did not appeal the arbitration decision, defendants relayed to claimant that payment of the arbitration decision would follow the deputy commissioner's ruling on the motion to enlarge. (Id.)

One day later, the deputy commissioner entered a ruling on defendants' motion to enlarge. (Ex. B) Following the issuance of the deputy's ruling, the parties had 20 days within which to file an appeal to the workers' compensation commissioner. 876 IAC 4.25 Pursuant to Rule 876-4.25, the deadline to file an appeal of the arbitration decision became January 30, 2018.

On January 11, 2018, defense counsel again wrote to claimant's counsel to inquire about claimant's intentions regarding an appeal of the arbitration decision. (Ex. C, p. 2) There is no evidence in the record to show claimant responded to defendants' inquiries. Defendants paid the amount awarded in the arbitration decision, in full, on January 12, 2018. (Ex. C, p. 3)

Defendants first assert the deputy commissioner erred in concluding claimant met his initial burden of proving there was a delay in payment of the arbitration award. In support of their argument, defendants appear to assert that a delay cannot occur

prior to the expiration of the appeal deadline. I disagree. As evidenced by the case of Schadendorf v. Snap-On Tools Corp., a delay can occur prior to the expiration of the appeal deadline; however, the "fairly debatable" standard still applies. 757 N.W.2d 330, 334 (Iowa 2008)

Before a claimant may seek penalty benefits under Iowa Code section 86.13, he or she must first meet the initial burden in establishing that there was a delay in the payment of benefits. Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 334 (Iowa 2008) Only after the claimant has satisfied his or her initial burden does the burden shift to the employer to prove a reasonable cause or excuse existed. (Id.)

In finding claimant is entitled to receive penalty benefits, the deputy commissioner relied, in part, on the Iowa Supreme Court's decision in Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330 (2008).

The Schadendorf case arose out of a July 26, 1999, agency decision, wherein Schadendorf was awarded workers' compensation benefits from her employer, Snap-On Tools Corporation ("Snap-On"). The cases were brought before the agency on remand from the Iowa Supreme Court. Weishaar v. Snap-On Tools Corporation, 582 N.W.2d 177 (Iowa 1998)

On July 26, 1999, the commissioner entered a final agency decision determining that Schadendorf (formerly Weishaar) was entitled to accrued workers' compensation benefits from Snap-On. Weishaar v. Snap-On Tools, File Nos. 847903, 916722, 916723, 916724, 916725, 916726 (Remand Dec. July 26, 1999) On August 9, 1999, Schadendorf requested Snap–On pay the award and interest, by August 25, 1999, the 30-day appeal deadline. See Schadendorf v. Snap-On Tools, File No. 916731 (Rem. Dec. Aug. 2005)

As a preliminary matter, defendants in the current matter assert the deputy commissioner misinterpreted Schadendorf in noting that August 26, 1999, marked the end of the appeal period. (Arb. Dec., p. 4) Defendants assert the appeal period actually ended on August 16, 1999, and August 25, 1999, was simply an arbitrary number used by the claimant's attorney for purposes of calculating the amount owed. While immaterial to the matter at hand, defendants' understanding of Schadendorf is inaccurate. The July 26, 1999, decision was not a proposed arbitration decision; rather, it was a remand decision from the Iowa Supreme Court. See Weishaar v. Snap-On Tools, File Nos. 847903, 916722, 916723, 916724, 916725, 916726 (Remand Dec. July 26, 1999) Therefore, the decision was final agency action, meaning, any appeals would be to the district court. The appeal period for judicial review is 30 days. Iowa Code section 17A.19(3) As such, the appeal deadline was August 25, 1999, not August 16, 1999.

On August 16, 1999, Snap–On indicated it would not seek judicial review and would pay the award. See Schadendorf, File No. 916731 (Rem. Dec. Aug. 2005)

On August 24, 1999, Schadendorf, who had not yet received payment, filed a "protective" judicial review action and a motion for judgment pursuant to Iowa Code section 86.42. See Schadendorf, File No. 916731 (Rem. Dec. Aug. 2005)

On September 7, 1999, the district court granted Schadendorf a judgment against Snap–On. Schadendorf then notified Snap–On that she was preparing an execution for levy on Snap–On's property. See Schadendorf, File No. 916731 (Rem. Dec. Aug. 2005)

On September 8, 1999, Snap–On issued a check to Schadendorf for the amount of the original award. Snap-On issued additional payments on September 24, 1999, and September 30, 1999. Thereafter, Schadendorf dismissed her judicial review action and filed a satisfaction of judgment. See Schadendorf, File No. 916731 (Rem. Dec. Aug. 2005)

Schadendorf subsequently filed a claim for penalty benefits based on Snap-On's allegedly unreasonable delay in paying the benefits awarded on July 26, 1999. See Schadendorf, File No. 916731 (Rem. Dec. Aug. 2005)

In a May 15, 2001, decision, a deputy workers' compensation commissioner determined that the thirty days following the July 26, 1999 agency decision – the period for filing a judicial review petition – as a matter of law, is considered a "grace period" for which penalty benefits cannot be imposed. The deputy commissioner did, however, award penalty benefits for the fifteen-day delay between the expiration of the grace period and the date Schadendorf received her first check. Schadendorf v. Snap-On Tools Corp., File No. 916731 (Arb. Dec. May 15, 2001) Both parties appealed the deputy commissioner's decision.

On January 30, 2002, the chief deputy workers' compensation commissioner issued the appeal decision. In the decision, the commissioner noted that the Iowa Supreme Court had not expressly addressed the issue of whether payment of an award during the pendency of the appeal period and/or judicial review process is a delay. However, the commissioner discussed how this agency has previously held that there is no delay in payment of an award until there is a final judgment in a contested case proceeding. See Meyers v. Holiday Express Corporation, File No. 913214 (App. July 31, 2000)

The chief deputy workers' compensation commissioner concluded Schadendorf was not entitled to receive penalty benefits, as there had been no delay in payments. The commissioner reasoned there could be no delay in the payment of benefits until there was a final judgment in the contested proceeding, and a final judgment did not occur in this case until Schadendorf dismissed her judicial review action. Schadendorf v. Snap-On Tools Corp., File No. 916731 (App. Dec. Jan. 30, 2002) Schadendorf sought judicial review.

The district court concluded that the agency erred when it concluded an employer's duty to act reasonably was suspended during the time for filing a petition for judicial review, and that therefore no penalty benefits could be imposed during the pendency of a judicial review action. The district court also concluded the agency committed legal error by concluding the pending judicial review action created a reasonable excuse for delay. See Schadendorf v. Snap-On Tools, File No. 916731 (Rem. Dec. August 2005)

The district court remanded the matter to the agency for a determination of whether Snap–On had a reasonable excuse for the delay of the payment of benefits after July 26, 1999. Both parties appealed the district court's decision.

The Court of Appeals held, "there can be no doubt Schadendorf's weekly compensation payments were all due and payable well before the agency entered its July 26, 1999, ruling. Accordingly, there was a delay in the payment of Schadendorf's benefits." The court went on to note that the debatable nature of the claim would provide a reasonable cause or excuse for the delay in payment up to and including July 26, 1999. The court declined to determine whether the delay in payment after July 26, 1999, was supported by a reasonable excuse. Schadendorf v. Snap On Tools Corp., 796 N.W.2d 457 (Iowa Ct. App. 2004)

The court of appeals agreed with the district court, and remanded the case back to the agency, to determine whether the delay after July 26, 1999, was unreasonable. The court offered some guidance to the agency in its decision. The court first provided that the mere fact an employer has a right to seek judicial review of an agency decision does not stay the employer's obligation to pay benefits or act in a reasonable manner. See Iowa Code section 17A.19(5)(a) (2001). The court further provided that the right to seek review is simply a factor to be considered in determining whether a delay is reasonable. Schadendorf, 796 N.W.2d 457 (2004)

On August 25, 2005, former commissioner Michael Trier issued the remand decision. (See Schadendorf v. Snap-On Tools, File No. 916731 (Remand Decision August 2005) Like the court of appeals, the commissioner found payment of the arbitration award was due on July 27, 1999, the day after the decision was issued. The commissioner further held an appeal from defendants would not have prevented collection of the judgment unless the defendants had sought and obtained a stay from the agency.

The commissioner found the claimant had proven a delay existed between July 26, 1999, and August 25, 1999. However, the commissioner declined to award penalty benefits for the aforementioned delay due to the fact the parties were communicating and cooperating in determining the correct amount of benefits owed, and "delay due to that type of interaction [is] not unreasonable." The parties' interactions are the reason penalty benefits were not imposed for the time period between July 26, 1999, and August 25, 1999, not the fact the deadline to appeal the agency's decision had not yet

passed. Schadendorf v. Snap-On Tools, File No. 916731 (Remand Decision August 2005)

In closing, the commissioner expressly overruled Meyers v. Holiday Express Corp., File No. 913214 (App. Dec. July 31, 2000) to the extent it held, as a matter of law, any time period allowed for appeal from a decision will not be seen as a period of unreasonable delay. (Id.)

The commissioner went on to discuss several factors to consider when assessing the reasonableness of a delay. He opined, "While it is fair to give an employer some time to consider a decision before their delay becomes unreasonable, that grace period does not extend for the entire amount of time allowed for taking an appeal." Like the court of appeals, the former commissioner held that a delay of 11 days or less is ordinarily reasonable, while anything longer is potentially, but not necessarily, unreasonable. He stressed the issue of reasonableness depends upon the actual circumstances of the case. (Id.) Both parties appealed the remand decision.

On July 28, 2006, the district court entered its judicial review decision. See Schadendorf, 757 N.W.2d 330 (2008) The district court reversed the commissioner's decision that the delay between July 26, 1999, and August 25, 1999, was reasonable, because Snap-On had not provided any evidence that the reasonable cause or excuse found by the commissioner – the parties' communication and cooperation – was in fact the reason for the delay. It remanded the case to the commissioner for determination of the reasonableness of the delay from July 27, 1999 until August 25, 1999. Both parties appealed the district court's decision.

The Iowa Supreme Court accepted the appeal and entered a decision on October 3, 2008. Schadendorf, 757 N.W.2d 330 (2008) As part of its decision, the court addressed the commissioner's decision not to award penalty benefits for the period between July 26, 1999, and August 25, 1999. On review of the entire record, the court found substantial evidence supported the commissioner's finding that the delay between July 26, 1999, and August 25, 1999, was reasonable due to the parties' communication and cooperation. Implicit in this finding is the fact a delay existed between July 26, 1999, and August 25, 1999. The court reversed the decision of the district court to remand the case back to the commissioner.

Given the above discussion, I reject defendants' assertion that a delay cannot occur prior to the expiration of the appeal deadline. Payment of the award was due on October 31, 2017, the day after the decision was issued. Payment was not issued until January 12, 2018. As such, I agree with the deputy commissioner that claimant established a delay in the payment of benefits.

The next question to be addressed on appeal is whether it was reasonable for defendants to delay paying the award before January 12, 2018.

On appeal, defendants argue their claim remained fairly debatable between October 31, 2017, and January 20, 2018. Defendants assert a workers' compensation claim remains "fairly debatable" until the appeal period has run, so long as there remains some genuine dispute, supported by the evidence, regarding the claimant's entitlement to benefits. Defendants assert, at a minimum, the issue of interest was still in dispute until January 10, 2018, when the deputy commissioner ruled on their Motion for Enlargement. On a broader scale, defendants assert that although their position was found to be without merit in the arbitration decision, their arguments remained fairly debatable throughout the appeal process or until the arbitration decision became final agency action.

A reasonable basis for delaying or denying benefits exists if the claim is "fairly debatable" as to either a matter of fact or law. Gibson v. ITT Hartford Ins. Co., 621 N.W.2d 388, 396 (Iowa 2001); see Covia v. Robinson, 507 N.W.2d 411, 416 (Iowa 1993). "A claim is 'fairly debatable' when it is open to dispute on any logical basis." Bellville v. Farm Bureau Mut. Ins. Co., 702 N.W.2d 468, 473 (Iowa 2005)

This is a unique case. The vast majority of post-hearing penalty cases that are brought before this agency involve a denial of benefits that continued throughout a pending appeal period. As defendants accurately point out, agency decisions similar to the matter at hand have overlooked or been relatively silent as to the delay that occurs between the issuance of the arbitration decision and the appeal deadline. See Emmerth v. Linweld, File No. 5034410 (Penalty Decision Jan. 8, 2018); Reiner v. HW Brand, File No. 5043096 (Arb. Dec. June 8, 2015)

Similar scenarios have been brought in front of the Iowa Court of Appeals. The Iowa Court of Appeals dealt with the penalty issue in an unpublished decision finding that a claim remained fairly debatable during the pending of an intra-agency appeal under the facts and circumstances of the case which included opinions of doctors supporting the employer's denial which might have been adopted by the commissioner in his de novo review. Millenkamp v. Millenkamp Cattle Co., 772 N.W.2d 270 (Iowa Ct. App. 2009)

In coming to her conclusion that defendants failed to meet their burden that their delay was reasonable, the deputy commissioner in this case stressed that defendants have an affirmative duty to assess whether there is a reasonable basis upon which to base their denial at all stages of a claim. Simonson v. Snap-On Tools, 588 N.W.2d 430, 437 (Iowa 1999) While it is true defendants have an ongoing duty to evaluate a denial of benefits in order to determine whether a continued denial is reasonable, the court of appeals has stressed the "fairly debatable" standard, even when defendants have done little to show re-evaluation of their claims following an arbitration decision. See Wilian Holdings Const. Products, Inc. v. Rice, 776 N.W.2d 301 (Iowa Ct. App. 2009); Weitz Co. v. Johnson, 779 N.W.2d 494 (Iowa Ct. App. 2010)

Whether or not there has been final agency action is also a legitimate factor in determining whether delay in making payments is reasonable, particularly where the evidence in the record is contradictory. Millenkamp v. Millenkamp Cattle Co., 772 N.W.2d 270 (Iowa Ct. App. 2009)

In Millenkamp, the sole issue was whether an arbitration decision rendered by a presiding deputy workers' compensation commissioner can alone impose a new duty upon the defendant employer and insurer to re-evaluate their denial of weekly benefits during the pendency of a timely appeal to the workers' compensation commissioner where the denial of benefits before hearing had been held in the arbitration decision to be fairly debatable. The former commissioner held that a post-hearing penalty was not appropriate under the facts of the case due to the fact defendants sought intra-agency appeal and urged reversal based upon competing medical evidence that could have been accepted by the commissioner in a de novo review. The agency decision was affirmed by the court of appeals. Millenkamp v. Millenkamp Cattle Co., 772 N.W.2d 270 (Iowa Ct. App. 2009)

In this case, there is nothing in the record to indicate that anything occurred during the hearing to render defendants' denial of additional benefits unreasonable or to impose a duty upon defendants to re-evaluate their past denial of additional benefits. See Squealer Feeds v. Pickering, 530 N.W.2d 678, 683 (Iowa 1995) (abrogated on other grounds by Wells Dairy, Inc. v. Am. Indus. Refrigeration, Inc., 690 N.W.2d 38, 44 (Iowa 2004)).

When the October 30, 2017, decision was issued, the decision was only a proposed decision of a presiding officer under Iowa Code section 17A.15 as prescribed by Iowa Code section 86.17. If a claim remains fairly debatable during the pendency of an intra-agency appeal, in part, because a proposed arbitration decision is not final agency action, it logically follows that a claim can remain fairly debatable between the issuance of an arbitration decision and the appeal deadline.

The evidentiary record contained competing medical opinions as to whether claimant's injury extended into the body as a whole. (See Ex. 1, p. 10) No new information arose through the arbitration hearing that would impose a new duty upon defendants to re-evaluate their denial of weekly benefits. Upon review of the evidentiary record, I find claimant's claim for additional benefits remained fairly debatable during the period of time at issue, from October 30, 2017, the date the original arbitration decision was filed, until payment of the award was issued on January 12, 2018.

While a delay can occur during the time period between the issuance of an arbitration decision and the expiration of the appeal deadline, there are few scenarios in which a denial of benefits would not remain fairly debatable during the same time period. See Millenkamp, File No. 5011148 (Ruling on Rehearing, December 10, 2007) Defendants' denial of additional benefits remained fairly debatable after the proposed

agency decision issued by the deputy. Therefore, under the facts of this case, claimant is not entitled to receive penalty benefits during the appeal period.

Assuming, for the sake of argument, claimant's claim was no longer fairly debatable following the issuance of the October 30, 2017, arbitration decision, I similarly find any delay between October 21, 2017 and January 12, 2018, was not unreasonable.

This agency is cognizant of the fact some delay is inevitable for the time it takes defendants to make a decision whether to appeal an award or pay it. Thereafter, some delay occurs as defendants calculate interest and process payment. While it is fair to give an employer some time to consider a decision before their delay becomes unreasonable, that grace period does not extend for the entire amount of time allowed for taking an appeal. Schadendorf v. Snap-On Tools, File No. 916731 (Remand Decision 2005) In Schadendorf, the former commissioner held that a delay of eleven days or less is ordinarily reasonable, while anything longer is potentially, but not necessarily, unreasonable. The issue of reasonableness depends upon the actual circumstances of the case.

In this case, the deputy commissioner issued the original arbitration decision on October 30, 2017. (Ex. 1) Sixteen days later, on November 14, 2017, defendants filed their Motion for Enlargement and Clarification. (Ex. A) It is reasonable to assume that during these sixteen days defendants had internal discussions regarding their options on appeal, as well as what interest rate would apply if they were to forego an intra-agency appeal and pay out the award. Like the deputy commissioner, I do not find this sixteen-day delay to be unreasonable.

Subsequent to defendants filing their November 14, 2017, motion, claimant requested the deputy commissioner grant the parties the opportunity to provide oral argument on the interest issue. Although defendants did not request such arguments, counsel for defendants expressed a willingness to participate in arguments. Due to scheduling barriers, oral arguments did not occur until December 21, 2017. Between November 14, 2017, and December 21, 2017, the attention of the parties had clearly shifted to the issue of what interest rate applied in calculating benefits owed to claimant pursuant to the arbitration award. In a perfect world, the parties would have been communicating at this time as to whether the other intended to appeal the arbitration decision.

Following oral arguments, but prior to the deputy commissioner's ruling, counsel for defendants notified claimant's counsel that defendants would not be appealing the arbitration decision. In the same correspondence, defendants inquired as to whether claimant would be appealing the arbitration decision. Defendants ended the correspondence by stating payment would be made pursuant to the arbitration award, pending the deputy commissioner's ruling on the Motion for Enlargement and Clarification. (Ex. C)

The deputy commissioner issued her ruling on January 10, 2018. (Ex. B) Defendants paid the arbitration award in full on January 12, 2018, 18 days prior to the expiration of the extended appeal deadline. (See Ex. C, p. 3)

I find defendants acted reasonably in requesting clarification on the correct interest rate in light of the 2017 amendments to the Iowa Workers' Compensation Act. Unfortunately, the time period to appeal the arbitration decision was extended in this case to the detriment of claimant. However, the delay was necessary to clarify the total amount of benefits owed. While defendants likely should have initiated payment of the principal amount owed sooner, there is no evidence defendants had decided against appealing the arbitration decision prior to January 9, 2018. To assume otherwise, and to hold defendants' liable for penalty benefits for this period of time, in this case, would infringe upon their right to appeal. For the foregoing reasons, I respectfully reverse the deputy commissioner's decision and I find defendants met their burden of proof to establish a reasonable cause or excuse for their delay in paying benefits.

ORDER

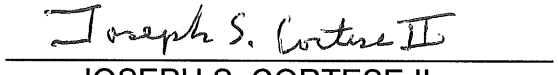
IT IS THEREFORE ORDERED that the arbitration decision, filed on April 4, 2019, is reversed.

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the appeal. The cost of the transcript shall be divided equally between defendants employer and insurer paying one share and claimant paying one share.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 8th day of April, 2020.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

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