

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

APRIL CLARK,

Claimant,

vs.

WINNEBAGO INDUSTRIES, INC.,

Employer,  
Self-Insured,  
Defendant.

File No. 5063138

REMAND DECISION

Head Note: 4000.2

## STATEMENT OF THE CASE

This matter is before the workers' compensation commissioner on remand from the Iowa Court of Appeals.

This matter was initially heard on September 18, 2017. At hearing, the parties stipulated claimant was entitled to temporary partial disability benefits July 18, 2016, August 8, 2016, through August 9, 2016, September 23, 2016, through October 8, 2016, and from November 20, 2016, through November 26, 2016, and healing period benefits from July 19, 2016 through August 7, 2016, and August 10, 2016, through September 22, 2016. (Arbitration Decision, pages 1-2) An issue in dispute at the hearing was whether defendant was liable for a penalty under Iowa Code section 86.13. (Arb. Dec. p. 2)

An arbitration decision was filed on December 21, 2017. The decision found, in part, claimant was entitled to 25 weeks of permanent partial disability benefits. The decision also found defendant was not liable for a penalty for the late payment of temporary benefits. (Arb. Dec. p. 14)

In an application for rehearing, claimant contended defendant was liable for a penalty under Iowa Code section 86.13 for the late payment of temporary benefits based on the stipulation at hearing. Claimant calculated 47 days of principal payment delays of temporary benefits totaling \$1,469.13. That application was denied. Clark v. Winnebago, No. 20-0673, slip op. at 12, filed April 14, 2021 (Iowa Court of Appeals); Application for Rehearing, pp. 8-9, filed January 9, 2018)

In a July 31, 2019, decision, the undersigned affirmed and adopted the arbitration decision in its entirety.

Claimant filed a petition for judicial review. Defendant cross-appealed. In an April 6, 2020, ruling on the petition for judicial review, the District Court affirmed the Commissioner's decision, in part, but remanded the case back to the Commissioner to make a more detailed finding regarding permanent disability. Claimant appealed and defendant cross-appealed.

In an April 14, 2021, decision, the Iowa Court of Appeals found no basis for an award for penalty based on claimant's marital status. The Court also found no basis for penalty related to the failure to pay permanent partial disability benefits. The Iowa Court of Appeals remanded the case back to the Commissioner to make a determination on the applicability of penalty for the underpayment of temporary benefits.

### **ISSUE**

Whether defendant is liable for a penalty under Iowa Code section 86.13 for the delay in payment of temporary benefits.

### **FINDINGS OF FACT**

The parties stipulated at hearing claimant was entitled to temporary benefits July 18, 2016, August 8, 2016, through August 9, 2016, September 23, 2016, through October 8, 2016, and from November 20, 2016, through November 26, 2016, and healing period benefits from July 19, 2016, through August 7, 2016, and August 10, 2016, through September 22, 2016. (Arb. Dec., pages 1-2) Claimant contends there were 47 days of principal payment delays in payment of temporary partial disability benefits and healing period benefits. This resulted in a delay of payment of \$1,469.13 in temporary benefits. Clark v. Winnebago, No. 20-0673, slip op. at 12, filed April 14, 2021. (Iowa Court of Appeals), (Ex. II, page 39; Application for Re-hearing, pp, 8-9) Defendants do not dispute this allegation.

There is no evidence in the record defendant established a reasonable excuse for failing to timely pay temporary benefits.

### **CONCLUSIONS OF LAW**

The only issue to be determined is whether defendant is liable for a penalty under Iowa Code section 86.13 for failure to timely pay temporary benefits.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

In 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 (Iowa 1996), the supreme court said:

Based on the plain language of section 86.13, we hold an employee is entitled to penalty benefits if there has been a delay in payment unless the employer proves a reasonable cause or excuse. A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable."

Christensen, 554 N.W.2d at 260.

The Iowa Supreme Court has stated:

(1) If the employer has a reason for the delay and conveys that reason to the employee contemporaneously with the beginning of the delay, no penalty will be imposed if the reason is of such character that a reasonable fact-finder could conclude that it is a "reasonable or probable cause or excuse" under Iowa Code section 86.13. In that case, we will defer to the decision of the commissioner. See Christensen, 554 N.W.2d at 260 (substantial evidence found to support commissioner's finding of legitimate reason for delay pending receipt of medical report); Robbennolt, 555 N.W.2d at 236.

(2) If no reason is given for the delay or if the "reason" is not one that a reasonable fact-finder could accept, we will hold that no such cause or excuse exists and remand to the commissioner for the sole purpose of assessing penalties under section 86.13. See Christensen, 554 N.W.2d at 261.

(3) Reasonable causes or excuses include (a) a delay for the employer to investigate the claim, Christensen, 554 N.W.2d at 260; Kiesecker v. Webster City Custom Meats, Inc., 528 N.W.2d at 109, 111 (Iowa 1995); or (b) the employer had a reasonable basis to contest the claim -- the "fairly debatable" basis for delay. See Christensen, 554 N.W.2d at 260 (holding two-month delay to obtain employer's own medical report reasonable under the circumstances).

(4) For the purpose of applying section 86.13, the benefits that are underpaid as well as late-paid benefits are subject to penalties, unless the employer establishes reasonable and probable cause or excuse. Robbennolt, 555 N.W.2d at 237 (underpayment resulting from application of wrong wage base; in absence of excuse, commissioner required to apply penalty).

If we were to construe [section 86.13] to permit the avoidance of penalty if any amount of compensation benefits are paid, the purpose of the penalty statute would be frustrated. For these reasons, we conclude section 86.13 is

applicable when payment of compensation is not timely . . . or when the full amount of compensation is not paid.

Id.

(5) For purposes of determining whether there has been a delay, payments are “made” when (a) the check addressed to a claimant is mailed (Robbennolt, 555 N.W.2d at 236; Kiesecker, 528 N.W.2d at 112), or (b) the check is delivered personally to the claimant by the employer or its workers’ compensation insurer. Robbennolt, 555 N.W.2d at 235.

(6) 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.

(7) An employer’s bare assertion that a claim is “fairly debatable” does not make it so. A fair reading of Christensen and Robbennolt, makes it clear that the employer must assert facts upon which the commissioner could reasonably find that the claim was “fairly debatable.” See Christensen, 554 N.W.2d at 260.

Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

Weekly compensation payments are due at the end of the compensation week. Robbennolt, 555 N.W.2d 229, 235.

Penalty is not imposed for delayed interest payments. Davidson v. Bruce, 594 N.W.2d 833, 840 (Iowa App. 1999). Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008).

When an employee’s claim for benefits is fairly debatable based on a good faith dispute over the employee’s factual or legal entitlement to benefits, an award of penalty benefits is not appropriate under the statute. Whether the issue was fairly debatable turns on whether there was a disputed factual dispute that, if resolved in favor of the employer, would have supported the employer’s denial of compensability. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

The parties stipulated claimant was due temporary benefits July 18, 2016, August 8, 2016, through August 9, 2016, September 23, 2016, through October 8, 2016, and from November 20, 2016 through November 26, 2016, and healing period benefits from July 19, 2016, through August 7, 2016, and August 10, 2016 through September 22, 2016. (Arbitration Decision, pages 1-2)

Claimant was entitled to a principal payment of \$1,469.13 for payments of temporary benefits that were paid late. There is no evidence in the record defendant

established a reasonable excuse for failing to timely pay the temporary benefits in question. Given this record, a penalty of 35 percent is appropriate. Defendant is liable to claimant for \$514.20 in penalty. (\$1,469.13 x 35 percent)

**ORDER**

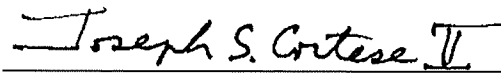
THEREFORE it is ordered:

Defendant shall pay claimant five hundred fourteen and 20/100 dollars (\$514.20) in penalty for the delay of payment of temporary benefits.

Defendant shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

The appeal decision remains the same in all other respects.

Signed and filed this 16<sup>th</sup> day of November, 2021.



JOSEPH S. CORTESE, II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served, as follows:

Mark Soldat (via WCES)

Lindsey Mills (via WCES)