



Significant Washington Board decisions refresher: **Penalties**

By Mary Hannon ■ December 3, 2021

Welcome to our Significant Board of Industrial Insurance Appeals Decisions Refresher series, which focuses on Board decisions that form the fundamentals of claims processing in Washington. The following is one of twelve blogs that will break down some of the most impactful Board significant decisions. Each blog will include key takeaways from referenced Board decisions that affect Washington workers' compensation rules and laws, and ultimately affect how you process your claims.

This week's refresher concerns significant Board decisions related to **penalties**. When reviewing this week's installment, please consider the following:

- Benefits are due as soon as claimant is entitled to them.¹ Every time a self-insurer unreasonably delays or refuses to pay benefits as they become due, the self-insurer shall pay a penalty not to exceed the greater of one thousand dollars or twenty-five percent of: (a) The amount due or (b) each underpayment made to the claimant. For purposes of this section, "the amount due" means the total amount of payments due at the time of the calculation of the penalty. The director shall issue an order determining whether there was an unreasonable delay or refusal to pay benefits within thirty days upon the request of the claimant. See RCW 51.48.017.
- The term "subject to a penalty" does not mandate an imposition of a penalty for every violation, whether minor or unintended. Determining whether a penalty is appropriate and if so, in what amount, must first be decided by the Washington State Department of Labor and Industries.²
- An assessed penalty bears some relationship to the violation that gave rise to the penalty.³

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Significant Decision #1: *In re Frank Madrid*, BIIA Dec., 86 0224-A (1987)

- Legal Issue: How does the Department penalty adjudicator determine if an employer's delay in paying benefits is reasonable or unreasonable?
- Key Point: The test of whether an employer's delay in paying benefits is "unreasonable" within the meaning of RCW 51.48.017 is "whether the

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Refresher: Time Loss and Loss of Earning Power (continued)

employer had a genuine doubt from a medical or legal standpoint as to the liability for benefits.” “[G]enerally a failure to pay because of a good faith belief that no payment is due will not warrant a penalty.” The question as to whether the self-insured employer had a genuine doubt, from a medical or legal standpoint, about its liability to pay a benefit necessarily involves questions as to the state of mind of the employer and the information it had regarding the issue of entitlement to the benefits in question, and when it gained possession of that information.⁴

Significant Decision #2: *In re Emily Eyrich*, BIIA Dec., 11 22230 (2013)

- Legal Issue: Is a penalty assessed against a self-insured employer as provided by RCW 51.48.017 considered a “benefit” thereby inducing a further penalty when not paid timely?
- Key Point: Yes. A penalty order as provided by RCW 51.48.017 is also a benefit within the meaning of that statute such that an unreasonable delay in paying the penalty by itself is grounds for the imposition of a further penalty.

Significant Decision #3: *In re Jackie Washburn*, BIIA Dec., 03 11104 (2004)

- Legal Issue: Under RCW 51.48.017, must penalties derive from the violation of a Department order mandating payment?
- Key Point: No, not necessarily. An otherwise warranted penalty against a self-insured employer should not be denied merely because the Department had not issued an order requiring the payment. In assessing whether a penalty was appropriate under RCW 51.48.017, the Board focused on whether the self-insured employer maintained a genuine doubt regarding the claimant’s entitlement to benefits during the period that benefits were withheld or denied.

Significant Decision #4: *In re James Coston*, BIIA Dec., 11 12310 (2012)

- Legal Issue: Should a self-insured employer be penalized for a delay in payment of medical benefits?
- Key Point: Payment of medical bills is a benefit under the Industrial Insurance Act. In the event a self-insured employer unreasonably delays the benefit or refuses to pay the benefit as it comes due, then RCW 51.48.017 requires a penalty against the self-insured employer.

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Refresher: Time Loss and Loss of Earning Power (continued)

Significant Decision #5: *In re Alfredo Suarez*, BIIA Dec., 15 20822 (2016)

- Legal Issue: Does the filing of a motion to stay benefits insulate the self-insured employer from an assessment of a penalty for delay in paying benefits?
- Key Point: No. For purposes of determining genuine doubt, the mere filing of an appeal does not establish genuine doubt. When the self-insured employer delays paying benefits it must have a genuine doubt that the benefits are due and cannot rely on the appeal or stay process under RCW 51.52.050 as a basis for delaying payment if there is no genuine doubt that payment is due.

Reach out to the attorneys at Reinisch Wilson Weier if you have any questions on the above significant decisions, on what constitutes an occupational disease, or on any workers' compensation matter. ■

¹ *Taylor v. Nalley's Fine Foods*, 119 Wn. App. 919 (2004); *In re Jacque Slade*, BIIA Dec., 0411552 (2005).

² *In re Eugene K. Dobler, Jr.*, Dckt. No. 09 19546 (Aug. 23, 2010).

³ *In re Susan Irmer*, BIIA Dec., 89 0492 (1990).

⁴ *In re Emily Eyrich*, BIIA Dec., 11 22230 (2013) (dissent).

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