



Workers' Compensation Penalties

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Published on www.lorman.com - January 2020

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PENALTIES

by
Aaron P.
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Since their inception, penalties under the Minnesota Workers' Compensation Act (the "Act") have presented countless problems for the workers' compensation practitioner. While the statutes codifying penalties are rather short, there are a number of complexities that can result in significant financial penalties to individuals navigating the maze under the Act. This article points out some of the common mistakes made and provides guidance in dealing with penalties. Please note that this article is not a complete recitation of all penalties, but only examines some of the common penalties that arise.

BACKGROUND

Penalties are codified in Minn. Stat. §§176.221 and 176.225. Under this statutory framework, penalties can result for a number of different reasons. The pertinent statute also lays out a framework for the assessment of penalties which are payable to the Assigned Risk Safety Account and/or the injured worker. Penalties can also result when state-mandated forms are not completed correctly. While some penalty amounts are nominal, it is important to remember that repeated mistakes on the part of an insurer can dramatically increase the amounts payable, or even limit an insurer's ability to underwrite workers' compensation insurance in Minnesota.

DENIALS OF LIABILITY

Over the last several years, the Minnesota Department of Labor and Industry

(DOLI) has made it a point to scrutinize denials of primary liability. Pursuant to Minn. Rule 5220.2570, denials of primary liability by an employer or insurer are required to be completed on a form known as the Notice of Primary Liability Determination (NOPLD). Under this specific rule, in order to deny primary liability for an alleged work injury, the party denying liability must include the following information:

- Information identifying the employee, employer and any adjusting company;
- The date of injury;
- The claim number or code used to identify the injury;
- The name and phone number of the person making the liability determination. Denials must also be signed by the person issuing the denial; and
- A specific reason for the denial in language easily readable and understandable to a person of average intelligence and education and a clear statement of the facts forming the basis for the denial.¹

A complete denial must also include:

- A copy of a medical report or summary of any healthcare provider contact which forms a basis for the denial; and
- Instructions to the employee if the employee disagrees, including the availability of rehabilitation benefits, the statute of limitations for filing a workers' compensation claim, and the address and telephone numbers of division offices the employee may contact for information.

In addition to these requirements, the denial of liability must be filed with the DOLI within 14 days of notice or knowledge by the employer of the injury and must also be served on the employee. A Notice of Intention to Discontinue Benefits (NOID) can also serve as a denial of

primary liability if the injury is initially admitted and the workers' compensation benefits are paid to or on behalf of the Employee.

In scrutinizing the primary liability determination, the DOLI has focused on areas where the denial is incomplete or does not provide an adequate explanation for the denial to the injured worker. Although the issue of insufficient denials has always been important to the DOLI, efforts to enforce incorrect denials increased in 2005 with the creation of a Compliance Unit in the Benefits Management and Resolution Unit.²

Following the creation of the Compliance Unit, the DOLI identified some common mistakes for non-specific denials. According to the DOLI, these denials include the following:

- We have evidence to suggest no injury occurred ...
- There are conflicting histories of the incident ...
- The employee did not make a timely report of the injury ...
- The employee has a pre-existing condition ...
- We have no medical to support a work injury ...
- Our investigation is not complete ...³

As noted above, the DOLI's focus has been in areas where general or generic statements are made when denying a claim. It has also been noted by the DOLI that the Act requires specific defenses and reasons explaining why the injury is not compensable. It further noted that common mistakes when denying a claim include the denial only stating a legal reason for the denial, but it is not supported by a statement of facts supporting the law, or an outright failure to conduct a good faith investigation of a claim. It also emphasized the statutory requirement of insurers to attach medical records if there is a specific medical reason for denying the claim.⁴

¹MN DOLI has applied a strict interpretation of this rule.

²Philip Moosbrugger, *Primary Liability Determination of Workers' Compensation Claim*, COMPACT, November 2005, p. 3.

³Philip Moosbrugger, *DLI Primary Liability Determination Review Process*, COMPACT, August 2006, pp. 15-16.

⁴*Id.*

TIMELY PAYMENT OF COMPENSATION

Following a determination that a claim is compensable, penalties may also be assessed for the failure to make timely payments. These penalties include failure to pay wage loss benefits, medical benefits, rehabilitation/retraining benefits and permanency benefits. Payment of temporary total disability benefits and permanent total disability benefits are required to be commenced within 14 days of notice or knowledge to the employer that an injury is compensable, or 14 days of notice or knowledge to the employer that a new period of lost time is due to a previous work injury.⁵ Extensions may be granted under limited circumstances. If these payments are not made in a timely manner, penalties may be assessed pursuant to Minn. Stat. §§176.221 and 176.225, which can be payable to the Assigned Risk Safety Account and/or the injured worker. Timely payment of temporary partial disability benefits is also required and can be sanctioned under the same statutory framework.⁶

Permanent partial disability benefits must also be paid in a timely manner. One of the most common areas resulting in penalties for the late payment of permanent partial disability is in instances where the permanency is not disputed, but the minimum permanency is not paid on a timely basis. According to Minn. Rule 5220.2550, Subp. 1A, minimum undisputed permanent partial disability must be made within 30 days of the receipt of a medical report containing a permanency rating or medical information from which the insurer may determine a rating. These payments can be made in the form of a lump sum or periodic payments, and the insurer is required to inform the employee in writing of the disability rating at the time the permanent partial dis-

ability is paid. [Note: Permanent partial disability benefits are not paid concurrently with temporary total disability benefits.]

Failure to pay medical bills in a timely manner can also result in penalties.⁷ As noted in the statute, insurers are required to pay medical bills for compensable care and treatment "as soon as reasonably possible" but no later than 30 calendar days after receiving the bill.⁸ Under these provisions, all or part of the requested charge can be denied under the following conditions:

- The injury or condition is not compensable under the Act;
- The charge or service is excessive as defined by the Act;
- The charges are not submitted on the prescribed forms; or
- Additional medical records or reports are required to substantiate the nature of the charge and its relationship to the compensable work injury.⁹

If a payment is denied because the proper documentation or reports are not received, the employer and insurer are given an additional 30 days to reconsider the bills. Payments that are not made after that point can be subject to penalties. It is also important to note that an injured worker has standing to bring a penalties claim for the payment of late medical expenses.¹⁰

Penalties for the late payment of rehabilitation or retraining benefits are found under Minn. Stat. §176.221, as well as §176.102, subs. 9 and 11. Common areas where these penalty claims are brought include failure to pay rehabilitation expenses in a timely manner,

failure to provide for a rehabilitation consultation, and failure to pay wage loss benefits while the employee is undergoing retraining.

Retraining issues can also give rise to a claim for penalties. Minn. Stat. §176.102, Subd. 11 (d), requires that the employer or insurer notify the employee in writing of the 208-week limitation for filing a request for retraining. The pertinent statute further indicates that the

notice must be given before 80 weeks of temporary total disability or temporary partial disability benefits have been paid to the injured worker, regardless of the number of weeks that have elapsed since the date of injury. If this notice is not given in writing to the employee, the period in which the employee may file a request for retraining is extended by the number of days that the written notice is late, but in no event can the request be filed greater than 225 weeks after any combination of temporary total disability or temporary partial disability benefits have been paid. A \$25 per day penalty may also be assessed for a late notice, with a maximum penalty of \$200 for failure to provide the notice. This penalty is payable to the Assigned Risk Safety Account.

PENALTIES BASED UPON A DISCONTINUANCE OF BENEFITS

Under the Act, benefits generally cannot be reduced, suspended or discontinued until written notice has been provided to an injured worker. The document that will typically be used to discontinue, reduce or suspend benefits is a NOID.

When discontinuing benefits under a NOID, the Minnesota Workers' Comp-

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⁵Minn. Stat. §176.221

⁶*Id.*

⁷Minn. Stat. §176.221, Subd. 6 (a)

⁸Minn. Stat. §176.135, Subd. 6

⁹Minn. Stat. §176.135, Subd. 6 (1) - (14)

¹⁰See *Roers v. Jenny-O Foods*, File No. 477-54-7825 (WCCA October 26, 1999).

¹¹Minn. Stat. §176.238, Subd. 1 and 9; Minn. Rule 5220.2630, Subp. 1 and 4.

sation Act is clear that this document must be served on the employee and his or her attorney.¹¹ As is the case with the NOPLD, a NOID must clearly set forth the facts for initiating the action.¹² Additionally, the form must be completed and relevant documents must be attached to the NOID. Failure to follow the proper procedure can result in a penalty payable to the Assigned Risk Safety Account and/or the employee.

PAYMENTS PURSUANT TO ORDERS

Failure to make timely payments pursuant to orders from a compensation judge or the DOLI is another common situation that can result in payment of penalties to the Assigned Risk Safety Account and/or the employee. Pursuant to the statute, all payments must be made within a period of 14 days following the service and filing of the order. Some errors that typically result in penalties include failure to make timely payments following the issuance of an Award on Stipulation or an adverse Findings and Order.

In *Thronson v. Premier Aggregates*, File No. 475-64-9431 (WCCA September 15, 2000), an employee brought a claim for penalties for failing to receive checks resulting from a Stipulation for Settlement within a 14-day period. The court concluded that the employer and insurer had adequately complied with the 14-day time period by mailing one of the settlement checks on the 14th day, and that the 14-day time period did not require actual receipt of the checks by the employee in that timeframe. It is also important to verify that settlement checks are sent to the correct address, as failure to send a check to the correct address can also result in a penalty.¹³

OBJECTING TO PENALTIES

Claims for penalties are initiated through the DOLI. When objecting to a penalty assessment, a written objection is required to be served on the DOLI, which is typically through a form titled Objection to Penalty Assessment. This

objection must be served on the Special Compensation Fund if the penalty is through the Special Compensation Fund, or the Assigned Risk Safety Account, as well as the DOLI. The objection to the penalty must also be served on the employee, if the employee is the initiating party. Objections must be served and filed within 30 days of the date of notice of assessment, and the objection must contain a detailed statement explaining the legal or factual basis as to why the penalty should not be awarded. All documentation is also required to be included with this objection. If objections to penalties are not resolved through the DOLI, they are referred to the Office of Administrative Hearings for a hearing on penalties.

DEALING WITH OR AVOIDING PENALTIES

As discussed above, there are a number of ways to receive or be subject to a penalties claim. Penalties are assessed based upon the failure of a party to file a prescribed form or commence payment of benefits within the prescribed timeframe. Additionally, common penalty claims arise in instances where the required factual and legal information is not provided on a denial form. In order to avoid or deal with penalties in instances where they are assessed, there are a number of ways one can go about dealing with these issues:

- Cooperate with the DOLI. It will either leave telephone messages or send letters to parties in penalty situations. The DOLI appreciates a timely return of all phone calls and letters. Although cooperation is not a guarantee that the penalty will be waived, it can lead to a reduction in the penalty and also create goodwill.
- Provide complete and detailed responses when completing primary denials. The DOLI has been aggressive over the last several years in reviewing denials and penalizing insurers for filing "non-specific" denials. When an initial claim is

received, it is important to conduct a complete investigation and keep detailed information on facts that will serve as a basis for the denial. Obtaining specific names of witnesses or locating medical records is essential. A short sentence or two is **not** sufficient when completing the NOPLD. A proper written denial must correctly state the law with supporting facts, and include documentation of a complete investigation. (Please note that if you are denying a claim for multiple reasons, you do not need to include *all* reasons. You may decide to only include one reason in order to develop the other defenses during discovery.)

- Remember the required timelines. It is important to remember when and how to pay various indemnity and medical benefits, and do it in a timely manner. If problems arise such as the receipt of paystubs when paying temporary partial disability benefits, it is important to document your file as to the dates that phone calls are made, to whom those phone calls were made, and any additional follow-up after the telephone call. If problems arise due to the receipt of mail, fax transmissions or email communications, document those problems and continue to follow up. It is also important to make sure someone is checking your mail when you are out of the office. Make sure payments are sent to the correct recipient and address.
- When in doubt - ask. Let's face it, the Minnesota Workers' Compensation Act and the Minnesota Rules are a complex framework filled with forms, deadlines, and payment schedules. Additionally, voluminous case law exists on penalty issues. The attorneys at Arthur Chapman's Workers' Compensation Practice Group are here to help you deal with these issues. ♦

¹²See *Webeck v. Mochinski General Contractor*, 41 W.C.D. 1062 (WCCA 1989).

¹³*Meyers v. K. Byte-Hibbing Mfg.*, Slip op. (WCCA December 22, 2005).

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