



California Workers' Compensation Institute

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Significant Decision 06-02

Under Labor Code section 5814(b), no penalty is due regardless of whether the applicant or defendant discovers the delay in payment of benefits, if the other provisions of the section are met.

New United Motors Manufacturing v. WCAB

Court of Appeal of the State of California

First Appellate District

Division 3

A112640

Filed: August 15, 2006

SIGNIFICANCE: The Court has affirmed that the ability to cure a delay in the payment of benefits under Labor Code section 5814(b) is available whether the delay is first discovered by the employer or the injured worker.

FACTS: In June of 2001, the injured worker was awarded \$31,535 for his work-related injury. The TPA managing the claim for NUMMI paid half of the award but mistakenly reported to the new TPA that the claim was fully paid. The injured worker eventually contacted his attorney who questioned the shortage.

The new TPA issued two checks to applicant, one in the amount of \$13,381.43 representing the amount owed for unpaid benefits, and the other in the amount of \$1304.14 representing a self-imposed 10 percent late-payment penalty in accordance with section 5814(b). Two months later the applicant filed a claim for penalty under section 5814(a).

The WCALJ held that it was implied in section 5814(b) that the discovery of the delay in payment of benefits be made by defendant in order to invoke the protection of that section from the full 5814(a) penalty. The trial judge awarded a 25% penalty for the delayed benefit payment and attorney's fees under 5814.5. The WCAB affirmed that interpretation.

HOLDING: The provisions of section 5814(b) require only that the employer discover the potential violation before the employee claims a penalty under subsection (a). The plain and unambiguous terms of subsection (b) do not require that the employer discover the potential violation before the employee.

DISCUSSION: Labor Code section 5414(b) allows the employer to “cure” a delay in benefits and pay a 10% self-imposed penalty in lieu of the greater penalty under section 5814(a). That provision was a part of the process to rationalize the use of penalties to enforce the employer’s payment obligations.

While the applicant's attorney argued that precluding the operation of subsection (b) unless the employer discovered its error would encourage employers to be vigilant, the court noted there was nothing in the case law or section 5814's legislative history to support that proposition. The Court also noted that the employer may send out hundreds or even thousands of checks at the same time and that it would not be unexpected for the employee to be first to discover the late payment.

The court reasoned that if the Legislature wanted to impose other restrictions on the operation of subsection (b), it would have done so. The Court reversed the award of attorney fees, but remanded that issue to the WCAB for further consideration, leaving the question open for the appeals board to determine whether attorney fees would be available under section 5814.5.

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