

## Nebraskans For Workers' Compensation Equity and Fairness

### LEGAL CORNER

#### *Late Payment of Medical Expenses* *Waiting Time Penalties – Attorney Fees – Interest*

The Nebraska Supreme Court recently issued an opinion interpreting the provisions of Neb.Rev.Stat. Section 48-125, relating to waiting-time penalties, attorney fees and interest. In the case of *VanKirk v. Central Community College*, 285 Neb. 231 (2013), the employee contended that she was entitled to a waiting-time penalty, attorney fees and interest as a result of not being personally reimbursed for medical expenses within 30-days of the court's order. However, the employer had made payment directly to the healthcare providers within 30-days of the court's order.

In *VanKirk*, the court ordered the employer to pay all outstanding medical charges and further directed that VanKirk, to the extent that she had paid any of the medical costs, was entitled to be reimbursed. The employee had paid \$13,449.18 in medical expenses for treatment related to her injury. Within 30-days of the award, counsel for the employer contacted the medical providers indicating that they would receive payment pursuant to the fee schedule audit and that they should reimburse VanKirk for the amount she had paid for her treatment. The employer made payments to the providers within 30-days of the award.

In response to the VanKirk's contention that she had not received reimbursements for payment made to healthcare providers within 30-days of the court's order, the employer argued that it had complied with the court's order by paying the medical providers within 30-days of the court's order and that the providers were then responsible for reimbursing VanKirk for any amount she paid in excess of the fee schedule.

In denying the employee's claim for waiting-time penalties, the court reiterated that **Neb.Rev.Stat. §48-125(1)** does not authorize a waiting-time penalty for an employer's delinquent payments of medical expenses. The court noted that the waiting-time penalty statute only applies to delayed payment of "compensation," which includes "periodic disability or indemnity benefits payable on account of an employee's work-related injury or death." Since medical expenses are not paid "periodically" in the same manner as wages, "compensation" does not include medical expenses. The court further noted that it is solely within the province of the Legislature to decide whether a waiting-time penalty should apply to delinquent payments of medical expenses. (The Trial Lawyers and Labor Unions have introduced legislation on a number of occasions to extend the waiting-time penalty provisions to delinquent payments of medical expenses which has been successfully opposed by NWCEF.)

In ruling in favor of the employer with respect to the issue of attorney fees, the court noted that Neb.Rev.Stat. Section 48-120 provides that an "employer is liable for all reasonable medical, surgical, and hospital services" and further noted that the workers' compensation court is to establish a schedule of fees for medical services and that health care providers are not to collect

any amounts from an injured employee in excess of the amounts established under the fee schedule.

The court concluded that the employer fully and timely complied with the award by paying the scheduled fee amounts to the medical providers within 30-days of the award. Upon receipt of payment from the employer, the healthcare providers became obligated to reimburse the employee for any amounts that she had previously paid in excess of the scheduled fee amounts. Even though reimbursements to the employee were not completed within 30-days of the court's award, the employer was not subjected to liability for attorney fees. Once the employer had made payment to the medical providers within the required 30-day time period, reimbursement of payments made by the employee were the responsibility of the providers, and any delay was not chargeable to the employer. Since an assessment of interest is only allowed under Neb.Rev.Stat. Section 48-125(3) when an attorney's fee is allowed, the employee was also not entitled to an award of interest.