

Nebraskans For Workers' Compensation Equity and Fairness

LEGAL CORNER

Waiting-Time Penalty and Attorney Fees – Lump-Sum Settlements

The Nebraska Supreme Court recently issued a decision regarding the ability of an employee to obtain a waiting-time penalty and attorney fees in a case in which a lump-sum settlement was implemented in compliance with Neb.Rev.Stat. Section 48-139(3), which dispenses with the need for court approval.

In *Holdsworth v. Greenwood Farmers Co-Op*, 286 Neb.49 (2013), an employee and the employer and its insurance carrier entered into a lump-sum settlement. The parties utilized the settlement procedures adopted by the legislature in 2009 and outlined in section 48-139(3), which do not require approval by the Worker's Compensation Court but, instead, require the filing of a release. In this case, the employee and his attorney, signed a release of liability, in which the employee waived "all rights under the Nebraska Workers' Compensation Act," including the right "to ask a judge of the Compensation Court to decide the party's rights and obligations." The release further acknowledged that the employer and its insurance carrier were "fully and completely discharged from further liability" on account of the injury.

The employee received his settlement payment 42 days after the release had been filed. Because payment was made more than 30 days after the filing of the release, the employee filed a motion with the Workers' Compensation Court to obtain a waiting-time penalty and attorney fees pursuant to Neb.Rev.Stat. Section 48-125.

The employer and its insurance carrier objected to the motion for waiting-time penalty and attorney fees, arguing that Section 48-125 was not applicable to settlements made under Section 48-139(3). Since the settlement was finalized without court approval, it was argued that there was no "entry of a final order, award, or judgment" to trigger the 30-day limitation. In overruling the Workers' Compensation order granting the employee a waiting-time penalty and attorney fees, the court determined that the penalty provisions of Section 48-125 do not apply to settlements reached under the new procedures of Section 48-139(3), since a worker waives his or her right to ask for penalties by filing the waiver required in Section 48-139(3).

The court reviewed the specific requirements of Section 48-139(3) to utilize the new settlement procedures not requiring court approval in reaching its decision. Notably, the statute mandates that if a "lump-sum settlement is not required to be submitted for approval by the Compensation Court, *a release shall be filed with the Compensation Court in accordance with this subsection.*" In order to protect the workers rights, Section 48-139(3) requires that the release be signed and verified by both the worker and the worker's attorney. It also mandates that the release be made on a form approved by the Compensation Court and that the form notify the worker of particular rights conferred by the Nebraska Workers' Compensation Act. It further requires that the release "shall contain" certain statements, including a statement that the worker "waives all rights under the Nebraska Workers' Compensation Act, including, but not limited to: [t]he right to ask a judge of the Compensation Court to decide the party's rights and obligations." In summary, the

court held that the settlement procedures in Section 48-139(3) require a worker to waive “all rights under the Nebraska Workers’ Compensation Act,” including both the right to penalties under Section 48-125 and “[t]he right to ask a judge of the Compensation Court to decide the party’s rights and obligations.” Because a worker who enters into a lump-sum settlement without court approval and files a waiver in compliance with Section 48-139(3) thereby waived “all” rights under the Nebraska Workers’ Compensation Act, he or she also effectively waived the right to penalties under Section 48-125. As a result, the penalty provisions of Section 48-125 were waived by implementation of and compliance with the waiver procedures under Section 48-139(3).

The streamlined lump-sum “release” procedure was designed to benefit both employers and employees. The decision in this case may serve to dampen the willingness of employee’s to utilize the “procedure,” which will not serve the interests of employers or employees. NWCEF will be considering potential legislation in 2014 to enhance the ability to minimize court involvement through the use of lump-sum settlement releases.