

Nebraskans For Workers' Compensation Equity and Fairness

LEGAL CORNER

Awards of Compensation *Waiting Time Penalties – Attorney Fees – Interest*

The Court of Appeals recently rendered a decision addressing the issue of whether an employer and its insurer complied with the provisions of **Neb.Rev.Stat. §48-125(1)** when they sent payment to the employer's attorney on the 30th day following the entry of a workers' compensation award and that attorney then delivered it to the employee's attorney on the 31st day.

In *Harris v. Iowa Tank Lines, 20 Neb. App. 513 (2013)*, the insurer for the employer forwarded a check in satisfaction of a court award to the counsel for the employer on the 30th day following the entry of the award. The employer's counsel received the check the next day and delivered the check to the employee's counsel on the 31st day following entry of the award. In holding that the payment to the employee was delinquent, the court referenced provisions of Neb.Rev.Stat. Section 48-125(1) requiring that payment of awards be sent directly to the person entitled to compensation or his or her designated representative within 30 days of the award. Since the check was initially sent to the employer's counsel instead of to the employee or his counsel, payment was not sent to the employee until 31 days after the entry of the award.

Despite arguments by the employer and its insurer that the employee received the check on the same day he would have had it been sent directly to the him by the insurer, the court strictly construed the statute and found for the employee under the facts of the case. The 50 percent waiting-time penalty in the *Harris* case applied to an untimely payment of \$265,000 with an additional award of attorney fees in the amount of \$2,500.

The dissenting opinion issued by Judge Pirtle noted that the check was sent by the insurer to the employer's counsel within the 30-day time period with the counsel then delivering the check to the employee's counsel on the day of receipt. The delivery of the check to the employee's counsel did not cause any noteworthy delay in delivery in this particular case. Judge Pirtle questioned the imposition of a penalty of \$132,500 plus additional attorney fees based on a "technical" violation of the controlling statute, suggesting that he had concluded "no harm, no foul," and that in construing the statute, the court should be guided by the presumption that the Legislature intended a sensible, rather than an absurd result in enacting the statute.