



New Case Brief
Prepared by Santa Rosa Office
David K. Lim, Esq.

Ramirez v. One Beacon Ins. Co. (2008, En Banc) 36 CWCR 229

Summary for New Brief Page:

In an En Banc decision, the Board ruled that 1) amounts of 5814(a) penalties are discretionary, and should be determined after consideration of specific factors; 2) successive penalties should not be awarded if the defendant showed genuine doubt as to liability; 3) under 5814.5 an unreasonable delay in paying the award entitles the Applicant's Attorney fees for enforcement against a private employer; 4) 5814.5 fees are to be awarded in addition to the 5814(a) penalty and not as a percentage of it; and 5) 5814.5 fees are to be determined based upon a reasonable number of hours at a reasonable hourly rate.

Case Brief

Applicant filed a claim which was resolved by way of a Compromise and Release for \$57,000.00 and settled vocational rehabilitation by way of an RU-122 for \$3,000.00. The C&R waived penalty issues if paid within 30 days of approval of the C&R. Defendant was 5 days late in making payment to the Applicant. The Applicant's attorney sent multiple letters requesting 25% penalties. The Defendant voluntarily paid a 10% penalty in the amount of \$5,700.00 on the C&R and \$300.00 on the RU-122.

Applicant filed a petition for penalties under Labor Code section 5814 stating that the Defendant should've paid the maximum penalty of 25% or \$10,000.00 which would have been \$10,000.00 on the C&R and \$750.00 on the RU-122. In addition, the Applicant alleged that the Defendant also owed an additional 25% due to underpaying the penalty, plus interest, and attorneys fees under 5814.5.

The WCJ ruled that the 10% penalty was sufficient and awarded the applicant's attorney \$600.00 for attorney fees. The Applicant filed a Petition for Reconsideration.

The panel issued an En Banc decision rescinding in part and returned to the WCJ for further proceedings. The court ruled that the WCJ had "discretion" in calculating the amount of 5814 penalties. However, the WCJ did not say why he only allowed 10%. Factors to consider in determining the amount of penalties are: the amount delayed, length of delay, was the delay inadvertent and if so was it promptly corrected, history of previously delayed payments, was there a specified time period to pay either by statute or agreement, was the delay due to realities of business in processing claims, basis of neglect to pay by the defendant (ie. Not hiring enough people to perform work, insufficient training), or running the business in a way that errors were unlikely, did the

employee contribute to the delay, and evidence of the effect on the employee due to delay.

The panel requested that the WCJ provide reasoning as to why the 10% was an appropriate penalty. The court also found that successive and separate 5814 penalties may be awarded if warranted and remanded this issue back to the WCJ as well.

The court also held that applicant's attorney fees were warranted and to be calculated on a reasonable hourly rate rather than a percentage. However, these fees would only be applied on top of the penalty if there is a prior award of benefits and the defendant has unreasonably delayed payment and the applicant's attorney incurred attorney fees in enforcing the prior award.