

COMPENSATION NEWS

MONTHLY REPORT

New decision on penalty provision under new penalty statute

This is a published appeals court decision

The applicant had an industrial injury that was admitted. The carrier entered into a stipulated award in the amount of \$31,535.00. The carrier made timely payments until a new third party administrator took over handling of the file. The new third party administrator incorrectly assumed all payments had been completed and ceased making permanent disability payments to the applicant.

The applicant attorney sent a letter to the new carrier requesting an explanation of benefits. The carrier discovered their mistake and issued a self imposed 10% penalty. The applicant attorney filed for a 5814 penalty.

The Workers' Compensation Judge (WCJ) issued a decision against the employer for a 25% penalty. The third party administrator filed a petition for reconsideration.

The appellate court reviewed section 5814. Section (a) deals with a 25% penalty. Section (b) indicates that the employer may issue a self imposed penalty of 10 % within 90 days of discovery of the mistake.

The appellate court indicated the discovery does not have to be by the employer. The discovery can be by the applicant or the

applicant attorney. The court discusses what "discovery" means and indicates it is not defined in the statute. Therefore, the employer can discover the mistake through any means.

The court would not rule on whether the applicant attorney was entitled to a fee under Labor Code section 5814.5. This issues was remanded back to the WCJ.

The applicant attorney also requested attorney fees for responding to the Writ and the appellate court disallowed this request.

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