

## **Employee's Estate Entitled to Penalties for Delayed Payment of Benefits**

The Workers' Compensation Court of Appeals recently determined in Zwiegl v. Pope Douglas Solid Waste, slip op. (W.C.C.A. March 28, 2005), an employee's heirs have standing to assert a claim for penalties.

In this case, the employee sustained an admitted hernia injury. The employer and insurer paid various workers' compensation benefits, including surgery. The employee returned to work and benefits were discontinued. A second surgery was performed several months later, after which the employee never returned to work. The employer and insurer did not reinstate workers' compensation benefits after the second surgery asserting the need for subsequent surgery did not result from the original work related injury.

The employee filed a Claim Petition asserting entitlement to temporary total disability benefits, medical benefits and penalties under Minn. Stat. § 176.225. The employee died as a result of a non-work related heart attack prior to the hearing. The personal representative of the employee's estate proceeded with litigation on the claim for temporary total disability, payment of medical expenses and penalties for failure to pay temporary total disability benefits.

The Compensation Judge awarded wage loss and medical benefits, she denied the employee's estate's claim for penalties under Minn. Stat. § 176.225, subd. 1 or 5.

Although the award of penalties otherwise appears to have been warranted, on appeal the employer and insurer cited McDowell v. Parson Elec. Co., 62 W.C.D. 434 (W.C.C.A. 2002), where the WCCA specifically determined an employee's heirs had no statutory basis for standing to assert a claim for penalties.

However, in the current case, the Court stated, "Upon further consideration, however, we conclude a deceased employee's heirs may assert a claim for penalties." In so doing, the Zwiegl Court felt the McDowell decision drew an artificial legal distinction between heirs and employees solely on the basis that a penalty is not a benefit specifically enumerated under Minn. Stat. § 176.021, subd. 3. The Zwiegl Court pointed to a number of subsequent decisions involving payment of attorney fees under Minn. Stat. § 176.081, subd. 7, as well as the obligation to pay outstanding medical benefits of a deceased employee under Minn. Stat. § 176.135, without those benefits enumerated as separate causes of action for an employee's heirs under Minn. Stat. § 176.021, subd. 3.

Therefore, not only does the Zwiegl decision specifically overturn the Court's earlier ruling in McDowell, arguably the case could be read as allowing for a litany of other claims by an employee's heirs even though the specific claims are not enumerated under Minn. Stat. § 176.021, subd. 3.