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Minnesota Supreme Court Issues Interesting Decision in Benefit Underpayment Case

Interest Begins Accruing on the Date of Each Underpayment at the Statutory Interest Rate in Effect on the Date of Each Underpayment

On May 29, 2019, the Minnesota Supreme Court issued a decision in *Oseland v. Crow Wing County*. The case sheds light on the calculation of interest in cases involving underpaid workers' compensation benefits. The court concluded that under Minnesota's workers' compensation statutory interest provision, M.S. 176.221 subdivision 7, the due date for underpaid compensation benefits is the date of each underpayment, and interest on those underpaid benefits accrues at the statutory rate in effect at the time the payment was due. The court also affirmed a complete denial of penalties and affirmed a denial of a request for reimbursement as a taxable cost the petitioner's expense incurred in obtaining a decree of descent.

Richard Oseland sustained an admitted work injury on January 10, 1980, and subsequently became permanently and totally disabled. The employer's insurer, Auto-Owners, began paying weekly permanent total disability benefits. In 1996 Oseland started receiving retirement benefits from the Public Employee's Retirement Association (PERA) and, based on the prevailing workers' compensation precedent from the Worker's Compensation Court of Appeals (WCCA), Auto-Owners began offsetting his permanent total disability benefits by the amount of PERA retirement benefits received. Mr. Oseland died in 2013 without a will and his permanent total disability benefits stopped.

In August 2014 the Supreme Court decided *Ekdahl and Hartwig*, which reversed long-established WCCA precedent and held that PERA retirement benefits cannot be used to offset permanent total disability benefits. Auto-Owners, working with the Minnesota Department of Labor & Industry, eventually concluded that as a result of taking the now-improper offset, they underpaid PTD by approximately \$159,000. Oseland's heirs eventually filed a claim petition seeking the underpayment, penalties, interest and reimbursement of the cost of obtaining the "decree of descent" as a taxable cost. (Because Oseland died without a will, the petitioners sought the decree to confirm Oseland's heirs).

Auto Owners reached a partial settlement with Mr. Oseland's heirs and paid the \$159,000 underpayment, but because the parties could not reach an agreement regarding penalties, interest and whether the cost of obtaining the decree of descent was a taxable cost those issues were tried. A compensation judge denied the claim for penalties and denied the claim for reimbursement of taxable costs but ordered Auto Owners to pay interest on the underpaid benefits. The compensation judge concluded the applicable rate of interest on the underpayments was based on the date of each underpayment i.e., "at the [interest] rate set by statute at the time the benefits became due and owing." The judge found no basis to award penalties. Finally, the judge concluded the cost of obtaining the decree of

descent was not taxable because it was not necessary to the workers' compensation litigation. The parties cross-appealed to the WCCA.

The WCCA affirmed the compensation judge's denial of penalties and the claim for taxable costs but reversed on the issue of interest. The WCCA's 3-2 majority determined that Auto-Owners owed no interest on the payments because they corrected the underpayment before the statutory deadline set forth in MS 176.1292, subdivision 2(d)(3) (2018). Oseland's heirs appealed to the Minnesota Supreme Court.

The Supreme Court upheld the denial of penalties and the denial of the request for reimbursement of taxable costs. However, it reversed the WCCA and reinstated the compensation judge's decision on the issue of interest. The Court concluded that interest started accruing on the date each individual (under)payment was made and the applicable interest rates were the statutory interest rates in effect at the time of each underpayment.

You can read the court's entire 21-page decision in *Oseland v, Crow Wing County*, ___ Nw2d___ (Minn. 2019).