

In the Matter of the ORS 656.262(11) Penalty Dispute of

**Dowell, Jim A., Claimant**

Contested Case No: H02-091

**PROPOSED AND FINAL ORDER**

March 6, 2003

JIM A. DOWELL Petitioner

GREAT AMERICAN ALLIANCE INSURANCE CORPORATION, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

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**HISTORY OF THE CASE**

This case involves a challenge to a Notification of Decision denying assessment of a penalty pursuant to ORS 656.262(11) issued by the Investigations and Sanctions Unit (Sanctions) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services. On November 7, 2002, Administrative Law Judge Paul Vincent conducted a telephone hearing in the matter. Petitioner Jim A. Dowell (claimant) was represented by Attorney Charles R. Mundorff. Respondent Great American Alliance Insurance Corporation and its claims administrator, Cambridge Integrated Insurance Services (insurer) were represented by Attorney Douglas A. Schoen. WCD waived appearance at the hearing. No witnesses testified. The record closed on December 4, 2002 upon the receipt of supplementary exhibits.

The record of this proceeding, consisting of a tape recording of the hearing, all evidence received, and all hearing papers filed, has been considered.

**ISSUE**

Whether a penalty is due for late payment of a Claims Disposition Agreement (CDA).

**EVIDENTIARY RULING**

WCD's Exhibits 1-10 as well as insurer's Supplementary Exhibits 3A and 3B were admitted into the record without objection.

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**FINDINGS OF FACT**

At hearing, the parties did not dispute the findings of fact in the Order Denying Assessment of a Penalty under review. Having reviewed the record in its entirety, I make the following findings of fact:

(1) The parties entered into a Claims Disposition Agreement and the Workers' Compensation Board Approved it on December 31, 2001. (Exs. 2-5 and 3.)

(2) Payment was due on January 14, 2002. (Exs. 2-5, 3, and 4.)

(3) On January 28, 2002, claimant's counsel contacted insurer's counsel to point out that claimant had not yet received payment on the settlement and to request a penalty for late payment. (Ex. 3A.)

(4) Insured issued payment on January 29, 2002. (Ex. 4-2.)

(5) On July 16, 2002, insurer provided claimant with a payment ledger listing payment dates. (Ex. 3B.)

(6) On July 19, 2002, claimant mailed a penalty request and the director received it on July 22, 2002. (Exs. 4-1 and 8-1.)

(7) On July 26, 2002, the Sanctions Unit issued a Notification of Decision denying assessment of a penalty pursuant to ORS 656.262(11). (Ex. 9.)

### **CONCLUSIONS OF LAW AND REASONING**

Claimant first contends that timely filing is not a jurisdictional requirement. Claimant next contends that the untimely filing is excusable because he ascertained information confirming late payment after the time had tolled. In contrast, insurer argues that the Sanctions Unit correctly determined that no penalty is due. I agree with Sanction's determination that insurer is not liable for a penalty due to late payment of the settlement amount.

ORS 656.262(11)(a) provides in part:

If the insurer or self-insured employer unreasonably delays or unreasonably refuses to pay compensation, or unreasonably delays acceptance or denial of a claim, the insurer or self-insured employer shall be liable for an additional amount up to 25 percent of the amounts then due.

OAR 436-060-0155(2) provides:

Requests for penalties under this section must be in writing, stating what benefits have been delayed or remain unpaid, and mailed or delivered to the division within 180 days of the alleged violation.

Here, payment of the settlement amount was due on January 14, 2002. Pursuant to OAR 436-060-0155(2), claimant was required to mail a penalty request to the director no later than 180 days later, or July 14, 2002. Claimant mailed the penalty request on July 19, 2002 and the director received it on July 22, 2002. Inasmuch as the penalty request was untimely, WCD lacks jurisdiction over the dispute. Furthermore, even if WCD had jurisdiction, I conclude that claimant's having ascertained information confirming the late payment after the filing deadline does not constitute good cause that would excuse the untimely filing.

**ORDER**

IT IS HEREBY ORDERED THAT:

The Notification of Decision dated July 26, 2002 is affirmed.

DATED this 6th day of March 2003.

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Paul Vincent, Hearing Officer  
Hearing Officer Panel