
In the ORS 656.262(11) Penalty Dispute of
J. BRADLEY ROSS, Claimant
Contested Case No: H04-125
PROPOSED AND FINAL ORDER OF DISMISSAL
February 18, 2005

J. BRADLEY ROSS, Petitioner
LIBERTY NORTHWEST INSURANCE CORP., Respondent
Before Catherine P. Coburn, Administrative Law Judge, Administrative Hearings

HISTORY OF THE CASE

Claimant appeals the Administrative Order issued on June 18, 2004 by the Sanctions Unit of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (director or department). On August 27, 2004, the department referred the matter to the Office of Administrative Hearings (OAH). On January 21, 2005, Administrative Law Judge Catherine P. Coburn conducted a contested case hearing. Petitioner J. Bradley Ross appeared *pro se* and testified on his own behalf. Attorney Robert L. Seelig represented respondent Liberty Northwest Insurance Corporation (insurer). The record closed on January 28, 2005, following receipt of claimant's supplementary exhibits.

ISSUE

Whether the director has jurisdiction over an ORS 656.262(11) penalty dispute where an ORS 656.745 civil penalty issue is presented.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 15 were received into the record without objection. Claimant withdrew proposed Supplementary Exhibit 16 and it is contained in the file marked "Claimant's Hearing Memorandum." I sustained insurer's reliability objection to claimant's Supplementary Exhibit 17 because it was illegible.

I left the record open to allow claimant to submit supplementary exhibits. Insurer indicated that it would not object to claimant's proposed Supplementary Exhibit 18 which is a photocopy of an envelope, on condition that the date stamp was legible. Exhibit 18 shows no date stamp, and therefore, I do not admit it into the record. Claimant's Supplementary Exhibits 19 through 22 are admitted into the record without objection.

FINDINGS OF FACT

I adopt and incorporate the findings of fact contained in the Administrative Order dated June 18, 2004 with the following supplementation:

At hearing, claimant seeks a penalty for late payment of temporary disability benefits pursuant to ORS 656.262(11). Additionally, claimant seeks a civil penalty pursuant to ORS

656.745¹ and OAR 436-060-0200(1).² (Ex. 15-1; testimony of claimant.)

CONCLUSION OF LAW

Where an ORS 656.745 civil penalty issue is presented, the director lacks jurisdiction over an ORS 656.262(11) penalty dispute.

OPINION

Jurisdiction

ORS 656.704 defines the respective authority of the director and the Workers' Compensation Board. "Matters concerning a claim" are within the jurisdiction of the board. ORS 656.704(3)(a). Alternatively, the director's jurisdiction is limited to specifically enumerated matters. *Id.*

Furthermore, ORS 656.262(11) provides:

(11)(a) 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 plus any attorney fees assessed under this section. The fees assessed by the director, an Administrative Law Judge, the board or the court under this section shall be proportionate to the benefit to the injured worker. The board shall adopt rules for establishing the amount of the attorney fee, giving primary consideration to the results achieved and to the time devoted to the case. An attorney fee awarded pursuant to this subsection may not exceed \$2,000 absent a showing of extraordinary circumstances. **Notwithstanding any other provision of this chapter, the director shall have exclusive**

¹ ORS 656.745(1) provides:

656.745 Civil penalty for inducing failure to report claims; failure to pay assessments; failure to comply with director rules or orders; amount; procedure. (1) The Director of the Department of Consumer and Business Services shall assess a civil penalty against an employer or insurer who intentionally or repeatedly induces claimants for compensation to fail to report accidental injuries, causes employees to collect accidental injury claims as off-the-job injury claims, persuades claimants to accept less than the compensation due or makes it necessary for claimants to resort to proceedings against the employer to secure compensation due.

² OAR 436-060-0200(1) provides:

The director through the division and pursuant to ORS 656.745 shall assess a civil penalty against an employer or insurer who intentionally or repeatedly induces claimants for compensation to fail to report accidental injuries, causes employees to collect accidental injury claims as off-the-job injury claims, persuades claimants to accept less than the compensation due or makes it necessary for claimants to resort to proceedings against the employer to secure compensation due.

jurisdiction over proceedings regarding solely the assessment and payment of the additional amount and attorney fees described in this subsection. The director's action and review thereof shall be subject to ORS chapter 183 and such other procedural rules as the director may prescribe.

(Emphasis added.)

Claimant raised an issue concerning an ORS 656.745 civil penalty in addition to an ORS 656.262(11) penalty. Inasmuch as an ORS 656.262(11) penalty is not the sole issue presented, the director lacks jurisdiction. Accordingly, I dismiss the request for hearing.

ORDER

IT IS HEREBY ORDERED that:

The July 16, 2004 request for hearing is dismissed.