

WCLA MCLE

4-11-2017

- Case Law Update: 19(l) Penalties; Theis v. IWCC
- April 11, 2017
- 12:00 noon to 1 pm
- James R. Thompson Center Auditorium, Chicago, IL
- 1 hour general MCLE credit

Brittany Theis v. Steak & Shake

13 WC 012736

- On **May 23, 2014**, the arbitrator issued his decision, finding that claimant suffered a work accident and awarding her benefits under the Act. Specifically, he awarded claimant temporary total disability (TTD) benefits in the amount of \$460 (which had already been paid by the employer); permanent partial disability (PPD) benefits in the amount of \$19,481 (88.55 weeks at a rate of \$220 or 35% permanent loss of use of her right arm); and "all medical expenses contained in [claimant's] Exhibits 1-9."
- On **October 3, 2014**, claimant filed a petition for penalties and fees pursuant to sections 19(l), 19(k), and 16 of the Act. She asserted that more than 130 days had passed since the arbitration decision was entered and that the employer had yet to pay either award.
- On **October 8, 2014**, the employer issued claimant a check in the amount of \$19,481 for payment of the PPD award.
- **October 16, 2014**, email from the employer's counsel to claimant's counsel which states, "I've never received any of your exhibits from trial and I must note I've asked several times since we tried the case. You allowed me to look through your trial exhibits the day of trial however I was never provided a copy." Counsel for the employer further noted its records showed that it had already "paid a significant amount of [claimant's] medical

Brittany Theis v. Steak & Shake

13 WC 012736

- On **December 4, 2014**, the employer issued a check to claimant in the amount of \$55,997.04 for her medical expenses.
- On **December 9, 2014**, a hearing on claimant's petition was conducted before the Commission. Regarding the award for medical expenses, claimant asserted that her medical bills "were submitted at trial in evidence and they were awarded pursuant to the arbitrator's award at that time on May 23, 2014." Claimant further argued that despite the employer's "notice of those outstanding bills prior to proceeding to the hearing," it "waited over 196 days to pay the award of medical expenses." In contrast, the employer argued it did not receive copies of claimant's medical bills until October 27, 2014, after having requested them from claimant's attorney. According to the employer, it was not relevant if copies of the medical bills were admitted at trial because the Act requires the medical bills to be tendered to the employer for payment. The employer further stated that upon receiving the medical bills from claimant, "a fee schedule calculation [was] made and the bills compared to other bills and other records we had previously received to make sure that there was no balanced [*sic*] billing or double billing." Once those tasks were completed, the employer issued claimant a check on December 5, 2014.

Brittany Theis v. Steak & Shake

13 WC 012736

- On **August 3, 2015**, the Commission entered its decision. First, it denied claimant's request for section 19(k) penalties and section 16 fees, finding she failed to prove the employer acted in an unreasonable or vexatious manner. Specifically, the Commission noted claimant had not (1) tendered the medical bills at issue to the employer until October 17, 2014, or (2) requested payment of her PPD award prior to filing her petition for penalties and fees. Essentially, it found that claimant's actions—or failure to act—caused the delay in the payment of the awards. Nonetheless, the Commission awarded claimant section 19(l) penalties in the amount of \$4,920 (\$30 per day from June 23, 2014, through December 3, 2014) due to the employer's failure to "timely pay[] the award or amounts otherwise due for medical bills and permanency upon the award becoming final and non-appealable."
- The employer appealed the Commission's award of section 19(l) penalties. On **April 12, 2016**, the **circuit court of Cook County reversed the Commission's award of section 19(l) penalties, finding that the employer's delay in paying the awards was justified**. It otherwise confirmed the Commission's denial of section 19(k) penalties and section 16 fees.

Theis v. IWCC
2017 IL App (1st) 161237WC
Section 19 (l)

- 19(l): If the employee has made a written demand for payment of benefits under Section 8(a) or Section 8(b), the employer shall have 14 days after receipt of the demand to set forth in writing the reason for the delay. In the case of demand for payment of medical benefits under Section 8(a), the time for the employer to respond shall not commence until the expiration of the allotted 30 days specified under Section 8.2(d). In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of \$30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed \$10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay.

Theis v. IWCC

2017 IL App (1st) 161237WC

Rule 9110.70

- **Section 9110.70 Explanation of Basis of Non-Payment, Termination or Suspension of Temporary Total Compensation or Denial of Liability or Further Responsibility for Medical Care**
- a) When an employee becomes unable to work due to an accidental or occupational disease arising out of or in the course of his or her employment, or alleges that he or she is unable to work, the employer, individually or by his or her agent, service company or insurance carrier, shall, within 14 calendar days after notification or knowledge of such inability or alleged inability to work: 1) begin payment of temporary total compensation, if any is then due; or 2) if the employer denies liability for payment of temporary total compensation for whatever reason, provide the employee with a written explanation of the basis for the denial; or 3) if the employer has insufficient information to determine its liability for payment of temporary total compensation, advise the employee in writing of the information needed to make that determination and provide in a written explanation why the requested information is necessary.
- b) When an employer begins payment of temporary total compensation and later terminates or suspends further payment before an employee in fact has returned to work, the employer shall provide the employee with a written explanation of the basis for the termination or suspension of further payment no later than the date of the last payment of temporary total compensation.
- c) When an employer takes the position that it has insufficient medical information to determine its liability for the initial payment of temporary total compensation, or the continuation of such payment, the employer shall have the initial responsibility to promptly seek the desired information from those providers of medical, hospital and surgical services of which the employer has knowledge. The employee shall have the responsibility to provide or execute authorizations for release of medical information as the employer may reasonably request from time to time, and the employer shall promptly provide the employee or his or her representative, upon request, with copies of the complete medical records and reports it obtains with the authorizations.
- d) When an employer denies liability for payment of the cost of all or a part of an employee's medical care, or initially accepts liability but subsequently declines further responsibility for providing or paying for all or a part of such care (for any reason including but not limited to the necessity or propriety of the care, or continuing care, or the unreasonableness of the cost of care), the employer shall promptly notify the employee with a written explanation of the basis for the denial of liability or further responsibility.
- e) Failure by either party to comply with the provisions of subsection (a), (b), (c) or (d) of this Section, without good and just cause, shall be considered by the Commission or an Arbitrator when adjudicating a petition for additional compensation pursuant to Section 19(l) of the Act, or a petition for assessment of attorneys' fees and costs pursuant to Section 16 of the Act.

Theis v. IWCC

2017 IL App (1st) 161237WC

- We review the decision of the Commission rather than the circuit court's judgment as the Commission is the ultimate decision maker in workers' compensation cases.
- Here, the employer provided adequate justification for its delay in paying claimant's award of medical expenses. Accordingly, **the Commission's award of section 19(l) penalties was against the manifest weight of the evidence.**
- Penalties under section 19(l) are in the nature of a late fee and are mandatory if the payment is late, for whatever reason, and the employer or its carrier cannot show adequate justification for the delay.
- The employer has the burden of justifying the delay, and the employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified.
- The Commission's evaluation of the reasonableness of the employer's delay is a question of fact that will not be disturbed unless it is contrary to the manifest weight of the evidence.

Theis v. IWCC

2017 IL App (1st) 161237WC

- Here, the employer asserts, as it did below, that its delay in paying claimant's medical bills was due to the fact that claimant did not tender the medical bills until October 27, 2014. According to the employer, once it had access to the bills, it calculated the amounts due pursuant to the fee schedule and issued a check to claimant for payment of all medical expenses on December 5, 2014.
- In contrast, claimant argues that her "written demand for payment of the medical expenses [as required by section 19(l) of the Act] was contained in the Request for Hearing form submitted by the parties at the beginning of the [a]rbitration hearing" and that the medical expenses claimed at arbitration were admitted into evidence. According to claimant, she "had no duty to tender the medical bills admitted into evidence to [the employer] following the [a]rbitration hearing." Rather, she contends the employer could have accessed her medical records by subpoenaing them directly from the medical providers, ordering them from the Record Copy Service identified on the subpoena for medical bills, or ordering a copy of the transcript of the proceedings and accompanying exhibits.

Theis v. IWCC

2017 IL App (1st) 161237WC

- Claimant cites no authority, nor does our research reveal any, to support the proposition that a written demand for payment of medical expenses contained within a request for hearing form submitted *in advance* of an arbitration hearing constitutes a sufficient written request for payment *following* an award of medical expenses under section 19(l) of the Act.
- Even if we were to find that claimant submitted a sufficient written request for the payment of her award of medical expenses under section 19(l) of the Act, we would still find the Commission's award of penalties was against the manifest weight of the evidence. The act of submitting medical bills into evidence during arbitration is not the same as tendering them to the employer for payment.
- Claimant cites no authority, nor does our research reveal any, which stands for the proposition that an employer has a duty to actively seek out a claimant's medical bills either through the use of a subpoena or some other method in order to comply with the requirements of section 19(l). Although the Commission found that it was claimant's failure to tender the medical bills to the employer that caused the delay in the payment of the award, it nonetheless awarded claimant section 19(l) penalties due to the employer's failure to timely pay the award, which was error.
- Employer provided adequate justification for its delay in paying award of medical expenses.

Square Up With Spfld. Urban League v. IWCC 2013 Il App (4th) 120219WC

- Pursuant to the Act, the employer must adjust the medical bills to conform to the fee schedule of section 8.2 of the Act.
- We note in response to the employer's concerns regarding coding and bundling that the fee schedule requires that services be reported with the CPT codes and in accordance with the HCPCS.
- If the claim does not contain substantially all the required data elements necessary to adjudicate the bill, or the claim is denied for any other reason, in whole or in part, the employer or insurer shall provide written notification, explaining the basis for the denial and describing any additional necessary data elements, to the provider within 30 days of receipt of the bill. 820 ILCS 305/8.2(d)(2).
- The Commission's decision ordering the employer to pay any unpaid, related medical expenses according to the fee schedule and to provide documentation with regard to said fee schedule payment calculations to Petitioner, complies with the statutorily mandated procedures set forth in the Act.