

1 **WORKERS' COMPENSATION APPEALS BOARD**
2 **STATE OF CALIFORNIA**

3
4 **DAVID JONES,**

5 *Applicant,*

6 **vs.**

7 **UKIAH TIMBER PRODUCTS; GOLDEN**
8 **EAGLE INSURANCE COMPANY,**

9 *Defendants.*

Case No. SRO 76675

**OPINION AND DECISION
AFTER RECONSIDERATION
(EN BANC)**

10
11 Applicant, David Jones, suffered an injury to his left knee on
12 September 21, 1993, while working as a truck driver for Ukiah Timber
13 Products, then insured by Golden Eagle Insurance Company. On
14 December 11, 1996, a workers' compensation referee (WCR) issued a
15 Findings and Award in which he found that defendants had
16 unreasonably delayed in providing travel expenses for medical
17 treatment; applicant was awarded a penalty equal to 10 percent of
18 all travel benefits. Applicant filed a Petition for Reconsideration
19 asserting that he should have been awarded a penalty equal to 10
20 percent of all medical benefits. On February 6, 1997, the Appeals
21 Board granted reconsideration in order to allow sufficient
22 opportunity to study the factual and legal issues. Because of the
23 significant legal issue presented, and in order to secure uniformity
24 of decision, the Chairman of the Appeals Board, pursuant to a
25 majority vote of the Board, has reassigned this case to the Appeals
26 Board as a whole for *en banc* decision.

27 For the reasons expressed below, we conclude that medical

1 travel expenses are part of the class of medical treatment expenses
2 under Labor Code section 4600. Therefore, an unreasonable delay in
3 the provision of medical travel expenses warrants a 10% penalty
4 under Labor Code section 5814 on the entire class of medical
5 treatment expenses under Labor Code section 4600.¹

6 DISCUSSION

7 It was found that the defendants unreasonably delayed the
8 applicant's medical travel expenses. Thus, pursuant to section
9 5814, a 10% penalty is required.

10 In awarding the penalty in this case, the WCR relied on the
11 following language from Labor Code section 5814, which states:

12 "When payment of compensation has been unreasonably
13 delayed or refused, either prior to or subsequent to the
14 issuance of an award, the full amount of the order,
15 decision or award shall be increased by 10 percent. . ."

16 The Supreme Court discussed section 5814 in *Gallamore v. Workers'*
17 *Comp. Appeals Bd.* (1979) 23 Cal.3d 815, 44 Cal.Comp.Cases 321. The
18 Court held, *inter alia*, that ". . . the phrase 'full amount of the .
19 . . award' in section 5814 refers to the full amount of the award
20 for the particular class of benefits delayed or withheld." Thus, in
21 the present case, the question is whether the expenses incurred in
22 traveling to obtain treatment are a separate class of benefits or
23 whether they are included within the class of medical benefits.

24 ¹ As pertinent, section 4600 provides: "Medical ... treatment ... that is reasonably
25 required to cure or relieve from the effects of the injury shall be provided by the
26 employer." This section has been interpreted to include reimbursement for reasonable
27 expenses of transportation to and from treatment. (See Caldwell v. Workmen's Comp.
App. Bd. (1969) 268 Cal.App.2d 912, 915-916, 34 Cal.Comp.Cases 37; Hutchinson v. Workers'
Comp. Appeals Bd. (1989) 209 Cal.App.3d 372, 376, 54 Cal.Comp.Cases 124; Soren v. Assoc.
Ind. Co. (1929) 16 I.A.C. 15; Bundock v. Globe Indem. Co. (1923) 10 I.A.C. 32.)

1 The case law on this issue is conflicting. In *Gallamore*,
2 *supra*, the Court's disposition included remanding the case for a
3 determination as to whether travel expenses had been unreasonably
4 delayed. In what appears to be dicta, the Court stated that, if
5 such a delay were proved, applicant would be entitled to a 10
6 percent penalty applied to the total amount of travel expenses.²
7 The *Gallamore* dicta was followed in *Fountain v. Workers'*
8 *Compensation Appeals Board* (1985) 50 Cal.Comp.Cases 13 (writ
9 denied), wherein the ten percent penalty was only assessed on the
10 medical travel expenses as a separate class of benefits and not on
11 the full award of medical benefits.

12 However, in *Remedy Home Health Care, Inc. v. Workers'*
13 *Compensation Appeals Board (Sharp)* (1996) 61 Cal.Comp.Cases 891
14 (writ denied), the Court of Appeal reached the opposite conclusion,
15 finding that medical benefits include the cost of travel to obtain
16 treatment. Thus, a 10% penalty was applied to the entire class of
17 medical benefits, not just the medical travel expenses. A panel of
18 the Appeals Board reached the same result in *Smith v. ESIS, Inc.*
19 (1996) 24 Cal.Workers'Comp.Rptr. 139.

20 In concluding that travel expenses are part of medical
21 benefits, we first note that section 5814 is designed to compel the
22 employer to provide compensation in a prompt and timely fashion.
23

24 ² The Court's statement appears to be dicta because it occurs in the last section of the
25 opinion, after a thorough discussion of a number of issues, and there is no discussion
26 or explanation of the rationale for concluding that travel expense is a separate class of
27 benefits. Moreover, the Supreme Court offered no definitive disposition on the
particular issue, and while such dicta is never disregarded lightly, the Board believes
that there are compelling and persuasive reasons to reach the present conclusion.

1 (Davison v. Industrial Acc. Com. (1966) 241 Cal.App.2d 15, 31
2 Cal.Comp.Cases 77.) An injured worker is entitled to prompt
3 treatment for his injury. (Granado v. Workmen's Comp. App. Bd.
4 (1968) 69 Cal.2d 399, 33 Cal.Comp.Cases 647.) The penalty is
5 designed to help an injured worker obtain essential treatment in
6 order to allow his/her return to work as quickly as possible.
7 (Davison v. Industrial Acc. Com, supra.)

8 In addition, Labor Code section 4600 requires the provision of
9 reasonable and necessary travel expenses as part of the cost of
10 medical treatment. We find that the medical travel expenses are an
11 element of the underlying benefit of medical treatment under Labor
12 Code section 4600. Therefore, where an injured worker must undergo
13 treatment by reason of the industrial injury, the cost of such
14 medical treatment includes the cost of necessary travel expenses
15 under Labor Code section 4600. (Caldwell v. Workmen's Comp. App.
16 Bd. (1969) 268 Cal.App.2d 912, 34 Cal.Comp.Cases 37.)

17 In *Hutchinson v. Workers' Comp. Appeals Board* (1989) 209
18 Cal.App.3d 372, 54 Cal.Comp.Cases 124, in another context, the Court
19 concluded that travel expense to obtain a prescription was a
20 treatment expense which the employer was obligated to provide
21 pursuant to Labor Code section 4600. In *Remedy Home Health Care,*
22 *Inc.*, supra, the Court relied on *Hutchinson* and noted that "Were
23 transportation costs not included in medical treatment benefits, the
24 injured worker might be deprived of necessary benefits, defeating
25 the fundamental purpose of extending benefits for the protection of
26 persons injured in the course of their employment.

1 Considering the above statutory and case law authority, we
2 conclude that travel expenses are an inseparable part of the class
3 of medical benefits and that an unreasonable delay or refusal to pay
4 travel expenses requires a 10 percent penalty on the entire class of
5 medical benefits. Moreover, arguments regarding the proportionality
6 of the size of the delinquency as compared to the resulting
7 total/gross penalty may be considered as one factor in determining
8 the reasonableness of the action or behavior. (See *Rhiner v.*
9 *Workers' Comp. Appeals Bd.* (1993) 4 Cal.4th 1213, 58 Cal.Comp.Cases
10 172, 176.)

11 For the foregoing reasons, as the *en banc* decision after
12 reconsideration of the Workers' Compensation Appeals Board,

13 IT IS ORDERED that the Findings of Fact be AFFIRMED and that
14 the Award be AMENDED to state as follows:

15 "AWARD IS MADE in favor of DAVID JONES against GOLDEN EAGLE
16 INSURANCE COMPANY of a penalty equal to ten percent of all medical

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1 benefits which have been paid, which are now payable, and which
2 become payable in the future."

3 WORKERS' COMPENSATION APPEALS BOARD

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5 Diana Marshall

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7 Allen S. Casey

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9 J. Wiegand

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11 Richard P. Gannon

12
13 [Signature]

14
15 Allen N. Heath

16
17 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA.

18 SEP 15 1997

19 SERVICE BY MAIL ON PARTIES AS SHOWN ON THE OFFICIAL ADDRESS RECORD
20 EFFECTED ON ABOVE DATE

21 Diana Douglas

