

IN THE IOWA SUPREME COURT

NO. 17-1419

Polk County No. CVCV053692

DAVID LOWELL EVENSON,

Petitioner/Appellant,

v.

**WINNEBAGO INDUSTRIES, INC. and SENTRY INSURANCE
COMPANY,**

Respondents/Appellees.

**APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
THE HON. JEFFREY FARRELL, JUDGE**

**RESPONDENTS/APPELLEES' FINAL BRIEF AND
CONDITIONAL REQUEST FOR ORAL ARGUMENT**

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WINNEBAGO INDUSTRIES, INC. AND SENTRY INSURANCE

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

**I. THE DISTRICT COURT CORRECTLY AFFIRMED
REMAND ADJUDICATIONS OF THE COMMISSIONER
CONCERNING IMPOSITION OF PENALTY FOR
HEALING PERIOD COMPENSATION**

Cases:

Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 (Iowa 2016)

Kuhlmann v. Persinger, 154 N.W.2d 860, 864 (Iowa 1967)

St. Luke's Hosp. v. Gray, 604 N.W.2d 646, 649 (Iowa 2000)

Statutes:

Iowa Code §86.13(4)(c)

Iowa Code §86.13

**II. THE DISTRICT COURT CORRECTLY AFFIRMED REMAND
ADJUDICATIONS OF THE COMMISSIONER CONCERNING
IMPOSITION OF PENALTY FOR PERMANENT PARTIAL
DISABILITY COMPENSATION**

Cases:

Evenson, 881 N.W.2d 380 (Iowa 2016)

ROUTING STATEMENT

Pursuant to Iowa R. App. P. 6.1101(3), this case involves questions relating to existing legal principles and transfer to the Iowa Court of Appeals would be appropriate. This is an administrative appeal from a decision of the Iowa Workers' Compensation Commissioner.

STATEMENT OF THE CASE

On 09/14/11, Petitioner David Evenson (hereinafter "Claimant") filed a Petition for workers' compensation benefits related to an injury he sustained to his left elbow while working for Respondent Winnebago Industries, Inc. on 05/18/10. (Petition, App. II-4) The hearing was held on 07/06/12 before Deputy Commissioner Larry Walshire. On 08/21/12, Deputy Walshire issued an Arbitration Decision. As related to this appeal proceeding, Deputy Walshire awarded Claimant 50 weeks of permanent partial disability (PPD) benefits beginning 11/30/11 and temporary partial disability (TPD) benefits for several time periods. The Deputy also found Claimant was entitled to healing period benefits for two separate periods of time. The Deputy awarded healing period benefits from 04/14/11 through 06/14/11. He also said Claimant was entitled to healing period benefits from 09/07/10 through 09/19/10, but Claimant was paid by the Employer

during this period so no further amount was awarded. Claimant had alleged he was also entitled to healing period benefits from 09/03/10 through 09/06/10, but those four days of healing period benefits were not awarded. (Arb. Dec., App. II-52) The Deputy also awarded penalty benefits under Iowa Code §86.13 as to only some of the claims. The Deputy found Claimant was timely paid for the first healing period in September 2010, but not the second healing period in April – June, 2011. He imposed a 25% penalty for the April – June 2011 healing period. The Deputy also found Claimant was not timely paid for all TPD benefits and awarded a 25% penalty for the TPD benefits he found were paid late. The Deputy did not assess a penalty as to the first healing period, nor as to the PPD benefits awarded. (Arb. Dec., App. II-52)

Defendants filed their Notice of Appeal to the Commissioner on 9/07/12. (Notice of Appeal, App. II-61) Claimant filed his Notice of Cross-Appeal on 9/12/12. (Notice of Cross-Appeal, App. II-81). On 08/02/13, the Iowa Workers' Compensation Commissioner issued an Appeal Decision affirming the Arbitration Decision. (Appeal Decision, App. II-101) On 09/03/13, Claimant filed his Petition for Judicial Review with the Winnebago County District Court. (09/03/13 Pet. for Jud. Rev., App. II-

106) On 10/22/14, the District Court entered an Order affirming the Commissioner's decision. (10/22/14 Order, App. II-147).

Claimant filed his Notice of Appeal to the Iowa Supreme Court on 12/16/2014. (12/16/14 Notice, App. II-170) On 06/03/16, the Supreme Court filed its opinion in Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 (Iowa 2016). The Supreme Court reversed the Agency decision in two respects. As to the first healing period awarded from 09/07/10 to 09/19/10, the Court found substantial evidence did not support the Commissioner's decision as to the date benefits began. Id. at 371. Accordingly, the Court remanded the issue to the Commissioner to determine if that first healing period began on 09/03/10, as argued by Claimant. On a separate issue, the Court also found that PPD benefits should have commenced at the termination of the first healing period (09/20/10) as opposed to the end of the second healing period (06/15/11). Id. at 374.

Specifically with regard to the penalty claim, the Supreme Court found that the penalty amount had been properly determined by the Agency. Id. at 375. The Court remanded the case to the District Court with the instruction to affirm the Commissioner's findings as to the weekly benefit

rate and the extent of PPD, and for the District Court to remand the case to the Commissioner for a redetermination of when healing period benefits commenced in September 2010, and a redetermination of the date when healing period benefits ended and PPD benefits commenced, and for a recalculation of penalty and interest benefits based on the new healing period and PPD dates. Id. at 375. The Court did not make a specific finding that the Employer had denied or delayed any benefits without reasonable or probable cause.

Justice Mansfield wrote a dissenting opinion on the issue of when PPD benefits should start. Although the Supreme Court opinion did not specifically indicate any additional penalty would be owed on PPD benefits because of the new modification of the law by the Supreme Court as to when PPD benefits will be found to begin, Justice Mansfield commented:

The Court's opinion is not clear, but to the extent the Court is indicating that penalty benefits could be awarded on any of the PPD benefits, I also disagree with that conclusion. Having modified the law as to when PPD benefits commence, it would be unfair for the Court to subject the Employer to a penalty for its lack of clairvoyance regarding the Court's own modification of the law. See Iowa Code §86.13(4) (Authorizing a penalty when there was a denial or delay of payment "without reasonable or probable cause or excuse"). The Commissioner did not award any penalty on

the PPD benefits, but the Court today upholds a penalty on “the delayed and underpaid benefits” and remands for “a recalculation of the amount of the penalty and interest owed based on the new healing period and PPD dates.”

Id. at 380 (Mansfield, J., dissenting)

On 02/03/17, the Commissioner entered his Remand Decision. The Commissioner found Claimant’s first healing period began on 09/03/10. Therefore, the Commissioner awarded benefits for four additional days, 09/03/10 – 09/06/10, because the Employer had already paid benefits from 09/07/10 – 09/19/10. The Commissioner also changed the start point for PPD benefits to 09/20/10, in accordance with the Supreme Court directive, although the total amount of PPD benefits remained set at 50 weeks. (Remand Decision, App. II-198)

The Commissioner then considered the penalty issue. With regard to the additional healing period benefits awarded from 09/03/10 – 09/06/10, the Commissioner held:

Defendants are liable for payment of healing period benefits from September 3, 2010, through September 6, 2010. This agency initially found defendants did not owe healing period benefits for the period of time from September 3, 2010, through September 6, 2010. (Arb. Dec., p. 11) That decision was affirmed by the district court. Based on this, defendants had a reasonable basis to not pay healing period benefits from September 3, 2010, through September 6, 2010,

and penalty is not appropriate for this period of time.

The arbitration decision found claimant was timely paid healing period benefits until his surgery. (Arb. Dec., pp. 6, 9). With the exception of the period of time from September 3, 2010, through September 6, 2010, that finding of fact and conclusion of law as not overruled by the Supreme Court. Based on this, no penalty is owed for healing period benefits paid from September 3, 2010 through September 19, 2010.

(Remand Dec., p. 3, App. II-200)

As such, the Commissioner did not award a penalty on the additional four days of healing period benefits awarded. With regard to the issue of the commencement date for PPD benefits, the Commissioner came to the same result. He stated that the Agency did not enter any finding of fact or conclusion of law that PPD benefits were unreasonable delayed or denied in the initial case. He also noted that the Supreme Court decision “gives no remand instructions for penalty on [PPD] benefits.” Therefore, he found that a penalty as to PPD benefits was not appropriate. (Remand Decision, App. II-201)

On 02/04/17, Claimant filed his rehearing application with the Commissioner. (App. Reh’g, 02/04/17, App. II-204) The Commissioner denied Claimant’s Application for Rehearing on 3/06/17. With regard to the healing period benefits awarded from 09/03/10 – 09/06/10, the

Commissioner stated:

As also noted in the remand decision, the underlying arbitration decision found claimant was timely paid healing period benefits prior to his surgery. With the exception of the period of September 3, 2010 through September 6, 2010, that finding of fact and conclusion of law was not overruled by the Supreme Court. The agency initially found defendants did not owe healing period benefits for the period of time from September 3, 2010 through September 6, 2010. (Arb. Dec., p. 6). That decision as affirmed by the district court. Based on this, defendants had a reasonable basis to not pay healing period benefits from September 3, 2010 through September 6, 2010, and penalty is not appropriate for this period of time.

(3/06/17 Order, p. 3, App. II-214)

With regard to the issue of whether any penalty on PPD benefits was owed,

the Commissioner further stated:

The underlying arbitration decision in this matter did not award a penalty for an alleged unreasonable delay or denial of permanent partial disability benefits. The intra-agency appeal decision, affirming that decision, did not modify the arbitration decision to include a penalty for alleged delay or denial of permanent partial disability benefits. The district court decision, affirming the agency decision, did not modify the appeal decision to include a penalty for alleged delay or denial of permanent partial disability benefits. The Supreme Court decision specifically recognized, in the background facts and proceedings section, that penalty was only awarded for delay or denial of healing period and temporary partial disability benefits. The Supreme Court gave no specific instruction for awarding a penalty for alleged delay or denial of permanent partial disability benefits.

(3/06/17 Order, p. 2, App. II-213)

On 3/07/17, Claimant filed a judicial review petition in the Iowa District Court for Polk County. (3/07/17 Pet. for Jud. Rev., App. I-5) On 08/25/17, the District Court filed its Ruling on Judicial Review. (08/25/17 Ruling, App. I-38) The Court agreed with the Commissioner that it did not appear the remand directive of the Supreme Court was to impose penalties as to the two categories of benefits that were subject to the Supreme Court's reversal. (08/25/17 Ruling, p. 6, App. I-43) The District Court also found the Commissioner's reasoning was rational and there was no question the Employer's argument at least cleared the hurdle of being "fairly debatable". (08/25/17 Ruling, p. 8, App. I-45) The District Court remanded the case to the Commissioner to make findings as to whether the Employer had complied with the provisions in Iowa Code §86.13(4)(c). (08/25/17 Ruling, p. 8-9, App. I-45-46) On 09/19/17, the Claimant filed his Notice of Appeal to the Iowa Supreme Court.

STANDARD OF REVIEW

Judicial Review of a decision of an administrative agency is governed by Iowa Code Chapter 17A. The grounds upon which the reviewing court may interfere with an agency decision are set forth in Iowa

Code §17A.19 and include where the Agency decision is based on an erroneous interpretation of law or is not supported by substantial evidence in the record or is arbitrary, capricious, and unreasonable. The agency decision is not considered to be unsupported by substantial evidence merely because inconsistent conclusions can be drawn from the same evidence. Iowa Code §17A.19(10)(f); IBP, Inc. v. Harpole, et al., 621 N.W.2d 410, 417 (Iowa 2001).

The Commissioner's findings of fact have the effect of a jury verdict and are to be broadly and liberally applied to uphold the agency decision. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 271 (Iowa 1995); Vosberg v. AY McDonald Mfg. Co., 519 N.W.2d 405 (Iowa App. 1994). When the agency's factual findings are supported by substantial evidence, they are binding on reviewing courts. IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 632 (Iowa 2000). The agency, as the fact finder, may accept or reject evidence in whole or in part. Id. at 631.

BRIEF POINT I

THE DISTRICT COURT CORRECTLY AFFIRMED REMAND ADJUDICATIONS OF THE COMMISSIONER CONCERNING IMPOSITION OF PENALTY FOR HEALING PERIOD COMPENSATION

Preservation of Error: Appellant did preserve error on this issue by briefing the issue to the District Court and timely filing a Notice of Appeal to the Iowa Supreme Court.

ARGUMENT

The District Court remanded the case back to the Commissioner to assess whether the Employer complied with the provisions of Iowa Code §86.13(4)(c) to determine whether any penalty would be owing on the four days of additional healing period benefits awarded from 09/03/10 – 09/06/10. With regard to healing period benefits, this is the only additional award entered by the Agency in accordance with the directive of the Iowa Supreme Court. However, on page 31 of his Brief, Claimant appears to be trying to expand the scope of the remand directive by the Iowa Supreme Court. With regard to healing period benefits, the Commissioner on remand was directed merely to redetermine when healing period benefits commenced in September 2010 and to recalculate penalty and interest based

on this new commencement date. Evenson, 881 N.W.2d at 375. The Iowa Supreme Court did not alter the Commissioner's previous finding regarding healing period benefits from 09/07/10 – 09/19/10, including the Commissioner's prior finding that no penalty was owed on the healing period benefits for 09/07/10 – 09/19/10.

Nonetheless, on page 31 of his Brief, Claimant appears to be requesting a review and redetermination of interest and penalty claims with regard to the entire 09/03/10 – 09/19/10 healing period. Claimant admits that on remand from an appellate court, the authority of the recipient of the remand is limited to the matters specified by the appellate court. The trial court has no authority to act on matters outside the appellate court's mandate. Kuhlmann v. Persinger, 154 N.W.2d 860, 864 (Iowa 1967). However, Claimant is clearly trying to reopen the issue of his claim for a penalty on benefits for which no prior penalty was awarded by the Agency and no alteration was made by the Supreme Court. Regarding the issue of healing period benefits, only four additional days of benefits were awarded as a result of the Supreme Court's decision and the directive by the Supreme Court to the Agency was to recalculate penalty and interest in light of the new healing period start date.

The Commissioner, on remand, very properly limited the scope of his inquiry to the specific remand directive of the Supreme Court. The Commissioner found there was a reasonable basis for Defendants to not pay healing period from 09/03/10 to 09/06/10. This was a matter specifically litigated before the Agency. As the Commissioner on remand noted, the Agency initially found Defendants did not owe these four days of benefits and this decision was affirmed by the District Court. The initial Arbitration Decision also found Claimant had been timely paid healing period benefits until his surgery and, with the exception of the period from 09/03/10 – 09/06/10, that finding of fact and conclusion of law were not overruled by the Iowa Supreme Court. Not only is this indicative of a reasonable basis for not paying those benefits, it is a proper recognition of the fact that any penalty or interest on benefits from 09/07/10 – 09/19/10 was not within the scope of the remand directive of the Iowa Supreme Court. There is nothing new to calculate.

In reviewing the Commissioner's findings of fact, the question is not whether evidence might support a different finding, but whether it supports the findings actually made. St. Luke's Hosp. v. Gray, 604 N.W.2d 646, 649 (Iowa 2000). Claimant argues the Commissioner on remand should

have made a redetermination regarding alleged payment delays during 9/03/10 - 9/19/10 and penalties on those delays. (Cl. Judicial Review Brief, p. 9, App. I-18). The Supreme Court only ordered a remand to the Commissioner for a redetermination of the date when healing period benefits commenced in September 2010, for a redetermination of the date when PPD benefits commenced, and for a recalculation of penalty and interest benefits based on the above dates. On Remand, the Commissioner found the healing period began 09/03/10. (Remand Dec., p. 3, App. II-200). The Commissioner recognized that, “The agency initially found defendants did not owe healing period benefits for the period of time from September 3, 2010, through September 6, 2010 [...] That decision was affirmed by the district court.” (Remand Dec., p. 3, App. II-200). The Commissioner found, “Based on this, defendants had a reasonable basis to not pay healing period benefits from September 3, 2010, through September 6, 2010, and penalty is not appropriate for this period of time.” (Remand Dec., p. 3, App. II-200) The Commissioner also correctly noted that, “The arbitration decision found claimant was timely paid healing period benefits until his surgery [...] that finding of fact and conclusion of law was not overruled by the Supreme Court” (Remand Dec., p. 3, App.

II-200). Ultimately, the Commissioner concluded:

With the exception of the period of time from September 3, 2010, through September 6, 2010, that finding of fact and conclusion of law was not overruled by the Supreme Court. Based on this, no penalty is owed for healing period benefits paid from September 3, 2010 through September 19, 2010.

(Remand Dec., p. 3, App. II-200).

These findings were consistent with the Supreme Court's remand instructions and within the discretion of the Commissioner as the finder of fact. The Commissioner's determination that Defendants did not owe penalty on healing period benefits from 09/03/10 – 09/19/10 is supported by substantial evidence in the record and does not constitute an error of law.

The District Court very properly rejected Claimant's argument that the Iowa Supreme Court was directing the Agency to calculate and impose a penalty. The District Court noted that with regard to healing period benefits, the Supreme Court only reversed the Agency as to the start date of the first healing period. The most likely interpretation of the Supreme Court's directive was that the Agency should consider whether to impose a penalty as it recalculated benefits for the first healing period. (08/25/17 Ruling, p. 6, App. I-43) This is what the Commissioner did. The Commissioner did not revisit penalty claims related to other portions of the

Agency award that were not disturbed on appeal. In other words, because the Supreme Court directed the Agency on remand to determine whether healing period began on 09/03/10, as opposed to 09/07/10 as initially awarded, it makes sense for the Supreme Court to include the directive that the Agency recalculate the penalty and interest based on this new decision. No finding was made by the Supreme Court that Defendant had unreasonably denied or delayed the additional four days of benefits. The Commissioner's Remand Decision as to healing period benefits was in full compliance of the scope of the remand directive and also supported by substantial evidence with regard to the finding that Defendants had a reasonable basis not to pay those four days of benefits.

Claimant argues the District Court should not have remanded this issue to the Commissioner for a determination of whether Defendants complied with §86.13(4)(c). However, as stated previously, Claimant's ultimate conclusion is overbroad with regard to healing period benefits. Even if it should ultimately be determined that some penalty is owed on the four days of benefits from 09/03/10 to 09/06/10, the amount would be within the discretion of the Commissioner. Defendants do not believe any penalty should be awarded and the Commissioner's decision was entirely

correct. However, it would not be for a reviewing court to make all of the determinations relative to a penalty analysis under Iowa Code §86.13. In no event should any discussion relative to a penalty on healing period benefits extend beyond the four days of additional healing period benefits awarded.

BRIEF POINT II

THE DISTRICT COURT CORRECTLY AFFIRMED REMAND ADJUDICATIONS OF THE COMMISSIONER CONCERNING IMPOSITION OF PENALTY FOR PERMANENT PARTIAL DISABILITY COMPENSATION

Preservation of Error: Appellant did preserve error on this issue by briefing the issue to the District Court and timely filing a Notice of Appeal to the Iowa Supreme Court.

ARGUMENT

The Commissioner's Remand Decision finding that a penalty on permanent partial disability benefits is not appropriate is supported by substantial evidence and is not an error of law. This decision is further supported by the subsequent Order denying rehearing. Therein, the Commissioner stated:

The arbitration decision did not award penalty for any alleged unreasonable delay or denial of permanent partial disability benefits.

The appeal decision affirmed the arbitration decision and awarded penalty only for the delay

or denial of healing period and temporary partial disability benefits. The appeal decision did not modify the arbitration decision to include a penalty for alleged delay or denial of permanent partial disability benefits. (App. Dec., August 2, 2013).

On October 22, 2014, the district court issued an order affirming the decision of the commissioner. The district court did not modify the order to include additional penalty for an alleged delay or denial of permanent partial disability benefits.

In the September 20, 2016 amended decision, the Iowa Supreme Court noted in the background facts and proceedings section of the decision that penalty, at the arbitration and intra-agency appeal level, was only awarded for unreasonable delay or denial of healing period and temporary partial disability benefits. [...]

As noted, the September 20, 2016 Supreme Court decision in this matter gave no specific instruction regarding assessment of a penalty for alleged unreasonable delay or denial of permanent partial disability benefits.

(3/06/17 Order, p. 2, App. II-213).

The Commissioner aptly concluded:

The underlying arbitration decision in this matter did not award a penalty for an alleged unreasonable delay or denial of permanent partial disability benefits. The intra-agency appeal decision, affirming that decision, did not modify the arbitration decision to include a penalty for alleged delay or denial of permanent partial disability benefits. The district court decision, affirming the agency decision, did not modify the appeal decision to include a penalty for alleged delay or denial of permanent partial disability benefits. The Supreme Court decision specifically recognized, in the background facts and proceedings section, that penalty was only

awarded for delay or denial of healing period and temporary partial disability benefits. The Supreme Court gave no specific instruction for awarding a penalty for alleged delay or denial of permanent partial disability benefits.

(3/06/17 Order, p. 2, App. II-213).

The District Court very logically rejected Claimant's argument regarding the intent of the Supreme Court. The District Court said the Commissioner's reasoning is rational, not only based on the fact that the Employer's argument was accepted at multiple levels, but also based on the reasoning within those decisions. The District Court correctly concluded, "there is no question that the Employer's argument at least cleared the hurdle of being 'fairly debatable'".

Specifically, with regard to permanent partial disability benefits, Defendants believe Claimant's argument goes too far with regard to the obvious intent of the Supreme Court. Basically, the Supreme Court determined that Claimant's first healing period began prior to 07/03/13 and ordered the Commissioner on remand to set the appropriate date. The Supreme Court also changed the law with regard to when PPD benefits begin and held that PPD benefits in the present case begin at the conclusion of the first healing period. While the Supreme Court did indicate some

additional healing period benefits were owed, it did not award any additional PPD benefits. Because some additional healing period benefits were awarded, it was logical for the Iowa Supreme Court to direct the Commissioner to also redetermine the penalty and interest issue in light of these additional four days of benefits awarded. There had never been a determination of any penalty on those additional four days. The Iowa Supreme Court could not merely conclude that no penalty was owed, or that some penalty was owed, because this was a matter within the purview of the Agency as the finder of fact.

However, with regard to PPD benefits, the Iowa Supreme Court gave no specific instruction regarding the assessment of a penalty on PPD benefits. In fact, the Iowa Supreme Court affirmed the finding of the Agency. There was no finding at all by the Iowa Supreme Court that the Agency erred in not assessing a penalty on the 50 weeks of PPD benefits awarded.

In referencing penalty and interest, the Iowa Supreme Court made a general statement that because of the alterations it did make, it was remanding for a recalculation of the amount of penalty and interest owed based on the new healing period and PPD dates. The most logical

interpretation of this is that a redetermination of penalty and interest was necessary for any additional healing period days awarded by the Commissioner on remand, and an additional recalculation of interest would be necessary relative to the new PPD commencement date. On page 37 of his Brief, Claimant attempts to rewrite the specific language used by the Iowa Supreme Court by deleting the references to healing period to make it look like the Iowa Supreme Court was actually issuing a directive that a penalty should be awarded on PPD benefits. This editing changes the tenor of the sentence entirely.

In addition, even if one were to assume that the Commissioner was free to assess a penalty on PPD benefits, the findings of fact of the Commissioner in both the Remand Decision and the 03/06/17 Order on Rehearing is easily supported by substantial evidence. Although it is unclear, Claimant seems to be arguing that because he previously raised the issue of penalty on PPD benefits but did not get a satisfactory ruling from the Commissioner, it is of no import that the Iowa Supreme Court did not disturb the Commissioner's refusal to award penalty on the 50 weeks of PPD benefits awarded. This argument is utterly misplaced in that it is the scope of the remand directive from the Supreme Court that is at issue. Even

with that said, the findings of the Commissioner do constitute substantial evidence. As Justice Mansfield stated in his dissenting opinion in Evenson, “it would be unfair for the Court to subject the Employer to a penalty for its lack of clairvoyance regarding the Court’s own modification of the law.” Evenson, 881 N.W.2d at 380 (Iowa 2016). Justice Mansfield recognized that the Supreme Court’s opinion on this topic was not clear. As recognized by both the Commissioner and the District Court, the most logical interpretation of the Supreme Court’s opinion is that there was no directive to impose a penalty on PPD benefits awarded.

In the original Agency Decision, penalties were *only* assessed on the delayed payments of HP and TPD benefits. There was no decision that PPD benefits were unreasonably denied or delayed. Moreover, as identified by the Commissioner in his Remand Decision, the Supreme Court provided no specific instruction for awarding penalty for alleged delay or denial of PPD benefits.

CONCLUSION

For the reasons stated above, Appellees pray that the District Court’s Ruling be affirmed.

**CONDITIONAL REQUEST FOR ORAL
ARGUMENT**

Appellees state that they desire to be heard in oral argument if
Appellant's request for oral argument is granted.

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because it has been prepared in a proportionally spaced typeface using Time New Roman in 14 point font and contains 4,453 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Joseph M. Barron
Joseph M. Barron

Date

CERTIFICATE OF SERVICE

I, Joseph M. Barron, member of the Bar of Iowa, hereby certify that on February _____, 2018, I or a person acting on my behalf served the above Respondents/Appellees' Final Brief and Conditional Request for Oral Argument to the Petitioner/Appellant's attorney of record, Mark Soldat, via EDMS in full compliance with Rules of Appellate Procedure and Rules of Civil Procedure.

/s/ Joseph M. Barron
Joseph M. Barron

CERTIFICATE OF FILING

I, Joseph M. Barron, hereby certify that I, or a person acting in my direction, did file the attached Respondents/Appellees' Final Brief and Conditional Request for Oral Argument upon the Clerk of the Iowa Supreme Court via EDMS on this _____ day of February, 2018.

/s/ Joseph M. Barron
Joseph M. Barron