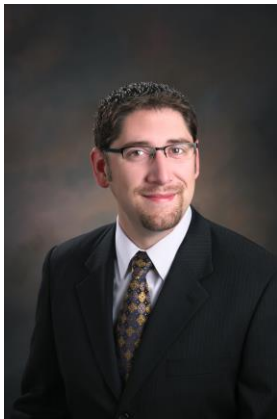

Avoiding Waiting Time Penalties: A Lesson From *Harris v. Iowa Tanklines*



Thirty days means thirty days. This is the message the Nebraska Court of Appeals has recently sent to employers and workers' compensation insurance carriers when issuing payments that are due an employee¹. In Nebraska, an employee is entitled to 50% waiting time penalties for all indemnity benefits if they are not paid within 30 days' notice of the disability (absent reasonable controversy) or if they are not paid within 30 days following an award or approval of a lump sum settlement. The Nebraska Supreme Court has held that if the envelope containing the check was post-marked within 30 days of the entry of the award, then the employee will not be entitled to waiting time penalties.² Still, the Court of Appeals in *Harris* gives a warning: be careful to whom you address the envelope.

In *Harris*, the parties entered into a lump sum settlement for \$315,000.00 that was approved by the court. Although \$50,000.00 was paid separately, and timely, \$265,000.00 was still owed to Harris. On day 30, the employer's insurance carrier sent the \$265,000.00 check made payable to Harris and his attorney via UPS next day delivery. However, this check was addressed to the employer's counsel, not Harris' counsel. The next day, day 31, the employer's attorney received the check and promptly notified Harris' attorney that the check had arrived. Harris' counsel picked up the check the same day it arrived (day 31). A year later, Harris' counsel decided to file a motion for waiting time penalties, attorney fees, and interest, arguing that the \$265,000.00 check was not timely.

The Court of Appeals noted that Neb. Rev. Stat. § 48-125(1) requires that payments be sent directly to the person entitled to compensation or his or her designated representative. Using this language, the Court specifically held that payment of indemnity benefits should be sent to the employee or his or her attorney. The employer argued that under *Brown* the Nebraska Supreme Court has held that the 30 day requirement is not violated as long as the check is mailed on day 30.³ The Court was quick to distinguish *Brown* because the check was sent to the

¹ *Harris v. Iowa Tanklines*, 20 Neb.App.413 (2013).

² *Brown v. Harbor Fin Mortgage Corp.*, 267 Neb. 218, 673, N.W.2d 35 (2004).

³ *Id.*

employer's counsel, *not the employee or employee's counsel*. The Court determined that payment was not made in a timely manner and Harris was entitled to \$132,500.00 in waiting time penalties. Had the check been mailed directly to Harris' attorney on day 30, Harris would not be entitled to waiting time penalties. According to the Court of Appeals, if an employer or insurance carrier is going to wait until day 30 to mail the check, it must be addressed to the employee or his or her representative.

For this reason, Baylor Evnen has long advised our clients to send any check for benefits directly to the injured worker or his or her attorney. Fewer mistakes are made and the process is less complicated when payments are sent directly to the employee or his or her attorney. Otherwise, an employer or insurance carrier can owe substantial waiting time penalties.